

2713 No. 13119

United States
Court of Appeals
For the Ninth Circuit.

PEOPLE OF THE STATE OF CALIFORNIA
and MAURICE C. SPARLING, as Superin-
tendent of Banks of the State of California,

Appellants,

vs.

COAST FEDERAL SAVINGS AND LOAN AS-
SOCIATION,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California,
Central Division.

FILED

JAN - 1 1952



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the District Court of the United States for the
Southern District of California, Central Division

No. 10528-C.

PEOPLE OF THE STATE OF CALIFORNIA
and MAURICE C. SPARLING, as Superin-
tendent of Banks of the State of California,

Plaintiffs,

vs.

COAST FEDERAL SAVINGS AND LOAN
ASSOCIATION, a Corporation,

Defendant.

PETITION FOR REMOVAL OF CIVIL
ACTION

Petition for Removal of Civil Action from the
Superior Court of the County of Los Angeles
in the State of California to the District Court
of the United States for the Southern District
of California, Central Division.

To the Honorable Judge of Said District Court of
the United States:

Your petitioner, Coast Federal Savings and Loan
Association of Los Angeles, the defendant above
named, respectfully shows:

1. That a civil action has been brought and is
now pending in the Superior Court of Los Angeles
County, in the State of California, a state court,
wherein People Of The State Of [2*] California

* Page numbering appearing at foot of page of original Reporter's
Transcript of Record.

and Maurice C. Sparling, as Superintendent of Banks of the State of California, are plaintiffs and your petitioner, Coast Federal Savings and Loan Association of Los Angeles, a corporation, is defendant, which action is designated by general No. 566395 and is hereinafter sometimes referred to as "said action No. 566395."

2. That said action No. 566395 is a civil action of which the district courts of the United States have original jurisdiction, and that the said action is one for an injunction and for penalties.

3. That petitioner hereby petitions to remove said action No. 566395 to this court upon the grounds and for the reasons that said suit is one arising under the Constitution and Laws of the United States, in that it involves the application of Article I, Section 8 of the Constitution of the United States and the "Home Owners' Loan Act of 1933," 12 USCA Sec. 1464, for the reason that plaintiffs allege in Paragraphs II and III of Count One, in Paragraphs II and III of Count Two, in Paragraphs II and III of Count Three, in Paragraphs II and III of Count Four, and in Paragraphs II and III of Count Five of their Complaint that the defendant Coast Federal Savings and Loan Association of Los Angeles is, and was at all times mentioned therein, a savings and loan association, organized under the provisions of 12 U. S. Code Annotated, 1464; and that defendant does not have, and has not had at any time mentioned therein, any authority, right or

permit from, by or under the United States of America to engage in or to transact a banking business or to solicit, receive or accept money on deposit as a regular business, or at all; and that defendant does not have, and has not had at any time mentioned therein, any authority, right or permit from, by or under the United States of America to advertise, make use of and circulate a circular or paper known as "Coast Federal's Challenger," having [3] thereon words indicating that the business of said defendant is the business of a bank or savings bank, and in particular having thereon the words

"Place Your Savings at Coast Federal . . .

"For . . . Safety, with federal insurance up to \$5,000 per account;

"For . . . Higher Return on Your Savings; 3% per annum is the current rate;

"For . . . Convenience, and friendly service;

"For . . . Availability—you can get your money when you want it.

"Accounts Opened by the 10th of the Month Earn from the 1st,"

and the words

"Your Savings Account Opened by the 10th of the Month, Earns Interest from the 1st! Whee!",

and the words

"Open Your Coast Federal Savings Account Now! Coast Federal Savings and Loan Association";

and that defendant does not have, and has not had at any time mentioned therein, any authority, right or permit from, by or under the United States of America to solicit and receive deposits and transact business in the way and the manner of a bank and savings bank and in such a way and a manner as to lead the public to believe that its business was and is that of a bank and savings bank contrary to the provisions of and in violation of the Bank Act of the State of California, and particularly sections 12 and 12a thereof, and contrary to the provisions and in violation of Chapter 18, Article 3 of the Banking Code of the State of California, and to, on each and every such day, contrary to the said provisions of said Bank Act and of said Banking Code, in its advertisements and advertising refer to its office and place of business as "banking office" and use and emphasize in such [4] advertising and advertisements the word "bank," and to advertise, publicize, adopt and transact business under and by means and with the words "our business is banking," "our banking is business," and "we solicit your banking business," and other similar words and phrases, and generally represent, indicate and hold itself out as a "bank" and lead the public to believe that the defendant was and is a bank and doing a banking business and a savings bank business; and that defendant does not have, and has not had at any time mentioned therein, any authority, right or permit from, by or under the United States of America to do each and all of the acts and things aforesaid and to use

the words in violation of Chapter 18, Article 3 of the Banking Code and to transact business in violation of such Code and in such a way and in such a manner as to lead the public to believe that defendant's business is that of a bank or of a savings bank; and basing, in part, their right to the relief sought, on the above allegations, plaintiffs seek to enjoin petitioner from accepting deposits and doing certain acts which plaintiffs allege constitute transacting a banking business.

4. That the matter in controversy in said action No. 566395 at the commencement of said action and at the present time exceeds the sum or value of \$3,000, exclusive of interest and costs.

5. That said action No. 566395 was commenced on the twenty-fourth of October, 1949, and process therein was served on petitioner's attorneys on the twenty-fifth of October, 1949.

6. Your petitioner herewith presents a good and sufficient bond, as provided by the statute, conditioned that your petitioner, the defendant, will pay all costs and disbursements incurred by reason of the removal proceedings should it be determined that the case was not removable or was improperly removed.

Wherefore, petitioner prays that the said action No. 566395 may be removable from said state court into this court [5] for trial and determination; that this court accept said bond and make and enter an order of removal of said action No. 566395; and

that a writ of certiorari in this behalf, for the record and proceedings heretofore had in said action No. 566395 in said state court, and in particular the exhibits attached to the Complaint therein, may issue from this court to the said Superior Court of the State of California in and for the County of Los Angeles.

Dated November 3, 1949.

COAST FEDERAL SAVINGS AND LOAN
ASSOCIATION OF LOS ANGELES

By /s/ J. E. HOLADAY,
Vice-President.

CRAIL AND CRAIL,

By /s/ HARRY G. McMAHON,
An Associate of the Firm.

State of California,
County of Los Angeles—ss.

J. E. Holaday, being sworn, says: That he is the vice-president of Coast Federal Savings and Loan Association of Los Angeles, a corporation, the above-named petitioner, and is authorized to make this verification for and on behalf of said corporation; that he has read the foregoing Petition for Removal of Civil Action and knows the contents thereof; that the same [6] is true of his own knowledge, except as to those matters which are therein stated on his information or belief, and as to those matters he believes it to be true.

/s/ J. E. HOLADAY.

Subscribed and sworn to before me on November 3, 1949.

[Seal] /s/ R. M. BLANELY,
Notary Public in and for
Said County and State. [7]

In the Superior Court of the State of California
in and for the County of Los Angeles

No. 566395

PEOPLE OF THE STATE OF CALIFORNIA
and MAURICE C. SPARLING, as Superin-
tendent of Banks of the State of California,

Plaintiff,

vs.

COAST FEDERAL SAVINGS AND LOAN
ASSOCIATION, a Corporation,

Defendant.

Action Brought in the Superior Court of the
County of Los Angeles, and Complaint Filed
in the Office of the Clerk of the Superior Court
of Said County.

SUMMONS

The People of the State of California Send Greet-
ings to:

Coast Federal Savings and Loan Association, a
corporation, Defendant.

You are directed to appear in an action brought against you by the above-named plaintiff in the Superior Court of the State of California, in and for the County of Los Angeles, and to answer the Complaint therein within ten days after the service on you of this Summons, if served within the County of Los Angeles, or within thirty days if served elsewhere, and you are notified that unless you appear and answer as above required, the plaintiff will take judgment for any money or damages demanded in the Complaint, as arising upon contract or will apply to the Court for any other relief demanded in the Complaint.

Given under my hand and seal of the Superior Court of the County of Los Angeles, State of California, this 24th day of October, 1949.

[Seal] HAROLD J. OSTLY,
County Clerk and Clerk of the Superior Court of
the State of California, in and for the County
of Los Angeles.

By K. MEACHEM,
Deputy.

Appearance: "A defendant appears in an action when he answers, demurs, or gives the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him." (Sec. 1014, C. C. P.)

Answers or demurrers must be in writing, in form pursuant to rule of court, accompanied with the necessary fee, and filed with the Clerk. [8]

In the Superior Court of the State of California,
in and for the County of Los Angeles

PEOPLE OF THE STATE OF CALIFORNIA
and MAURICE C. SPARLING, as Superin-
tendent of Banks of the State of California,
Plaintiffs,

vs.

COAST FEDERAL SAVINGS AND LOAN
ASSOCIATION, a Corporation,
Defendant.

COMPLAINT FOR INJUNCTION TO RE-
STRAIN VIOLATION OF STATE BANK-
ING CODE, AND FOR PENALTIES

Plaintiffs allege.

Count One

I.

That plaintiff Maurice C. Sparling is, and was
at all times mentioned herein, the duly appointed,
qualified, and acting Superintendent of Banks of
the State of California.

II.

That the defendant Coast Federal Savings and
Loan Association is, and was at all times mentioned
herein, a corporation, organized under the provi-
sions of 12 U. S. Code Annotated, 1464, and having
its principal place of business in Los Angeles
County, California. [9]

III.

That defendant is, and was at all times mentioned herein, a savings and loan association, organized as alleged herein; that defendant is not, and was not at any time mentioned herein, a "bank" as defined in the Bank Act of the State of California (Act 652, Deering's General Laws), nor as defined in the Banking Code (Ch. 755, Stat. 1949); that defendant does not have, and has not had at any time mentioned herein, any certificate from the Superintendent of Banks of the State of California, and does not have, and has not had at any time mentioned herein, any authority, right or permit from, by or under the State of California or the United States of America to engage in or to transact a banking business or to solicit, receive or accept money on deposit as a regular business, or at all.

IV.

That on or about November 1, 1948, and on each and every day thereafter up to on or about March 1, 1949, defendant, contrary to and in violation of the said Bank Act, and particularly sections 12 and 12a thereof, made use of an office sign and signs at the place where defendant's business is transacted in Los Angeles, California, having thereon words indicating that such place or office is the place or office of a bank and having thereon the words "bank" and "savings," and having such words lettered on its said place of business in Los Angeles, California, as more particularly appears from Exhibit "A" attached hereto, hereby referred

to and made a part hereof; that each and all of the foregoing acts and things were done and performed by defendant in such a way and in such a manner as to lead, and for the purpose and with the intent of leading, and that the same did lead, the public to believe [10] that defendant's business was and is that of a bank and of a savings bank and that defendant was at all of said times engaged in and transacting a banking business.

V.

That at all times herein mentioned said Bank Act provided that any corporation violating any provision of sections 12 or 12a thereof shall forfeit to the State of California \$100.00 a day for every day during which such violation continues; that the violations aforesaid continued each and every day from November 1, 1948, to on or about March 1, 1949, both inclusive, and that defendant thereby forfeited and became liable to said State for the sum of \$100.00 for each and every one of such days.

Count Two

A.

Plaintiffs hereby refer to, incorporate, and reallege paragraphs I, II and III of Count One hereof and make the same and each and every allegation contained therein a part of this Count Two, as paragraphs I, II, and III, respectively thereof, the same as if specifically set forth at length herein.

IV.

That on each and every month, and on each and every day beginning November 1, 1948, up to and including the commencement of this action, contrary to the provisions and in violation of the said Bank Act, and particularly sections 12 and 12a thereof, and contrary to the provisions of said Banking Code, and particularly section 3391 thereof, defendant has [11] made use of and circulated a circular or paper known as "Coast Federal's Challenger," having thereon words indicating that the business of said defendant is the business of a bank or savings bank, and in particular having thereon the words

"Place Your Savings at Coast Federal . . .

"For . . . Safety, with federal insurance up to \$5,000 per account;

"For . . . Higher Return on Your Savings; 3% per annum is the current rate;

"For . . . Convenience, and friendly service;

"For . . . Availability—you can get your money when you want it.

"Accounts Opened by the 10th of the Month Earn from the 1st,"

and the words

"Your Savings Account Opened by the 10th of the Month, Earns Interest from the 1st! Whee!",

and the words

"Open Your Coast Federal Savings Account

Now! Coast Federal Savings and Loan Association”;

and other similar words and phrases; that each and all of the aforesaid acts and things were done and performed by defendant in such a way and in such a manner as to lead, and for the purpose and with the intent of leading, and that the same did lead, the public to believe that defendant's business was and is that of a bank and of a savings bank and that defendant was at all said times and is authorized and empowered to engage in and to transact a banking business.

V.

That at all times herein mentioned, to and including September 30, 1949, said Bank Act provided that any corporation violating any provision of sections 12 or 12a thereof, shall [12] forfeit to the State of California \$100.00 a day for each and every day during which such violation continues; that on and ever since October 1, 1949, said Banking Code, and section 3395 thereof, provide that any person violating any provision of the foregoing sections of that article, including section 3391 thereof, shall be liable to the people of the State of California in the amount of \$100.00 a day during which such violation continues; that the violations aforesaid continued from November 1, 1948, to and including the time of filing this action, and that defendant thereby forfeited and became liable to said State for the sum of \$100.00 for each and every one of such days.

Count Three

A.

Plaintiffs hereby refer to, incorporate, and re-allege paragraphs I, II and III of Count One hereof and make the same and each and every allegation contained therein a part of this Count Three, as paragraphs I, II, and III, respectively thereof, the same as if specifically set forth at length herein.

IV.

That on November 1, 1948, and on each and every day thereafter up to and including the commencement of this action, defendant solicited and received deposits and transacted business in the way and the manner of a bank and savings bank and in such a way and a manner as to lead the public to believe that its business was and is that of a bank and savings bank contrary to the provisions of and in violation of said Bank Act, and particularly sections 12 and 12a thereof and contrary to [13] the provisions and violation of Chapter 18, Article 3 of said Banking Code; that on each and every such day defendant contrary to the said provisions of said Bank Act and of said Banking Code, in its advertisements and advertising referred to its office and place of business as "banking office" and used and emphasized in such advertising and advertisements the word "bank," and advertised, publicized, adopted and transacted business under and by means and with the words "our business is banking," "our banking is business," and "we solicit your banking business," and other similar words

and phrases, and generally represented, indicated and held itself out as a "bank" and lead the public to believe that the defendant was and is a bank and doing a banking business and a savings bank business.

V.

Plaintiffs hereby refer to, incorporate, and reallege paragraph V of Count Two hereof and make the same and each and every allegation contained therein a part of this Count Three, as paragraph V thereof, the same as if specifically set forth at length herein.

Count Four

A.

Plaintiffs hereby refer to, incorporate, and reallege paragraphs I, II and III of Count One hereof and make the same and each and every allegation contained therein a part of this Count Four, as paragraphs I, II and III, respectively thereof, the same as if specifically set forth at length herein. [14]

IV.

That said section-12 of the said Bank Act further provides:

" . . . that any building and loan association having in its corporate name words not clearly indicating the nature of its business shall, on all signs, letterheads, and advertising matter, state: 'This is a Building and Loan Association,' or words to that effect . . . and . . . no such association shall advertise or hold itself out to the public as a savings bank.";

that section 3392 of said Banking Code provides in part, as follows, to wit:

“Any building and loan association or savings and loan association having in its corporate name words not clearly indicating the nature of its business shall state, on all signs, letterheads, and advertising matter, ‘This is a Building and Loan Association,’ or ‘This is a Savings and Loan Association,’ or words to that effect.”;

that on or about November 1, 1948, and on each and every day thereafter up to the date of filing this complaint, the defendant violated, and is now continuing to violate, the said provisions of said Bank Act, and of said Banking Code, in that it has continuously advertised and referred to itself as “Coast Federal Savings,” without using the balance of its corporate name, and without appending to its advertising matter any words to the effect that it is a Savings and Loan Association, or otherwise, and by reason of the matters and things herein stated the defendant has since November 1, 1948, and now is, advertising, and holding itself out to the public [15] as a bank, and as a savings bank, and has and is advertising in such a way as to lead, and mislead, the public to believe that its business is that of a bank.

V.

Plaintiffs hereby refer to, incorporate, and re-allege paragraph V of Count Two hereof and make the same and each and every allegation contained therein a part of this Count Four, as paragraph

V thereof, the same as if specifically set forth at length herein.

Count Five

A.

Plaintiffs hereby refer to, incorporate, and re-allege paragraphs I, II, and III of Count One, paragraph IV of Count Two, paragraph IV of Count Three, and paragraph IV of Count Four hereof, and make the same and each and every allegation contained therein a part of this Count Five, as paragraphs I, II, III, IV, IVa, and IVb, respectively thereof, the same as if specifically set forth at length herein.

V.

That defendant has done, is doing, threatens to continue doing, and will, unless enjoined and restrained by this court, continue to do, each and all of acts and things aforesaid and to use the words in violation of Chapter 18, Article 3 of the Banking Code and to transact business in violation of such Code and in such a way and in such a manner as to lead the public to believe that defendant's business is that of a bank or of a savings bank. [16]

Wherefore, plaintiffs pray

1. That plaintiffs have judgment against defendant for the sum of \$100.00 per day for each and every violation set forth in Counts One, Two, Three, and Four hereof for each and every day such violations continue from and including November 1,

1948, to and including the date of entry of judgment herein;

2. That defendant, and its officers, agents, servants, employees, and all other persons acting for and on behalf of defendant, be permanently restrained and enjoined from

(a) Using any sign or signs, or lettering on or at defendant's office or place of business having thereon the word "bank" or the word "savings," unless such latter word is used in and as part of defendant's full name, or any other word or words indicating that defendant's office or place of business is a bank or a savings bank or that defendant is authorized or empowered to engage in or transact a banking business;

(b) Using or circulating the "Coast Federal's Challenger," or any other magazine, circular or paper having thereon or therein any of the words set forth within quotations in paragraph IV of Count Two herein, or any other word or words indicating that the business of defendant is that of a bank or savings bank;

(c) Soliciting or receiving deposits or transacting business in the way and manner of a bank or savings bank, or in such a way or manner as to lead the public to believe that defendant's business is that of a bank or savings bank;

(d) Using in any advertisements or adver-

tising [17] matter any reference to defendant's office or place of business as a "bank" or "savings bank" or "banking office," or advertising, publicizing, or in any other way stating or making reference that "our business is banking" or "our banking is business" or "we solicit your banking business," or using in any way any other similar words and phrases representing, indicating, or in any manner inferring that the defendant is a "bank" or a "savings bank," or leading the public to believe that defendant is doing a banking business or is in any manner authorized or empowered to act as a "bank" or to transact any banking business.

3. That plaintiffs have judgment against defendant for their costs incurred herein; and for such other and further relief as to the court shall seem proper.

FRED N. HOWSER,

Attorney General of the State
of California.

/s/ WALTER L. BOWERS,

Assistant Attorney General.

/s/ BAYARD RHONE,

Deputy Attorney General,
Attorneys for Plaintiffs.

State of California,

City and County of San Francisco—ss.

Maurice C. Sparling, being by me first duly sworn, deposes and says: That he is the Superintendent of Banks of the State of California, one of the plaintiffs in the foregoing and above-entitled action; that he has read the foregoing Complaint (for Injunction to Restrain Violation of State Banking Code, and for Penalties) and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

/s/ MAURICE C. SPARLING.

Subscribed and sworn to before me, this 20th day of October, 1949.

[Seal]

AGNES M. COLE,

Notary Public in and for Said State of California,
City and County of San Francisco.

My commission expires August 28, 1951.

[Endorsed]: Filed November 3, 1949. [19]

[Title of District Court and Cause.]

NOTICE OF PETITION FOR REMOVAL
OF CIVIL ACTION

To People of the State of California and Maurice C. Sparling, as Superintendent of Banks of the State of California, Plaintiffs; and Fred N. Howser, Attorney General of the State of California; Walter L. Bowers, Assistant Attorney General, and Bayard Rhone, Deputy Attorney General, Their Attorneys:

Please Take Notice, that the defendant in the above-entitled action on November 3, 1949, filed in the District Court of the United States for the Southern District of California (Central Division) a Petition for Removal of the said action from the Superior Court of the State of California in and for the County of Los Angeles to said District.

Dated November 3, 1949.

CRAIL AND CRAIL,

By /s/ HARRY G. McMAHON,
Attorneys for Defendant.

Affidavit of Service attached.

[Endorsed]: Filed November 9, 1949. [20]

[Title of District Court and Cause.]

ANSWER TO COMPLAINT FOR INJUNCTION
TO RESTRAIN VIOLATION OF STATE
BANKING CODE AND FOR PENALTIES

Comes now the defendant, Coast Federal Savings and Loan Association of Los Angeles, and for answer to the complaint filed herein alleges and denies as follows:

Answer to Count One of Complaint

First Defense

I.

Count One of said complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

I.

Answering paragraph III of Count One of said complaint, [23] defendant admits that it is and was at all times mentioned therein a savings and loan association organized under the provisions of 12 U. S. Code, Section 1464; defendant admits that it does not have, and has not had at any time mentioned in said complaint, any certificate from the Superintendent of Banks of the State of California, but defendant alleges it does not need any such certificate and that defendant is not subject to the jurisdiction of the plaintiffs, or either of them.

Except as herein expressly admitted, defendant denies each and every allegation contained in said paragraph.

II.

Answering paragraph IV of Count One of said complaint, defendant admits that between the dates therein alleged, it made use of signs having thereon the words "bank" and "savings" as appears in Exhibit "A" of said complaint, but defendant alleges that at any time either of said words were used it was used in conjunction with other words and as part of a phrase, such as "Member Federal Home Loan Bank," "Coast Federal Savings," "Coast Federal Savings and Loan Association," and "Coast Federal Savings and Loan Association of Los Angeles."

Except as herein expressly admitted, defendant denies each and every allegation in said paragraph.

III.

Answering paragraph V of Count One of said complaint, defendant denies each and every allegation of fact contained therein, but neither admits nor denies the conclusions of law contained therein.

Third Defense

Defendant is an instrumentality of the United States Government, and all of such acts as were done by defendant were done by virtue of and under the authority of the government of the [24] United States.

Fourth Defense

The laws and regulations of the government of the United States provide for administrative remedies and procedures for alleged violations of

law by federal savings and loan associations. Said remedies and procedures have not been resorted to by the plaintiffs, nor exhausted by them.

Fifth Defense

By custom and usage in the financial business, financial institutions do not usually use their full corporate name on signs, in advertising and advertisements, in transacting business or to indicate the nature of their business.

Sixth Defense

Any and all acts, advertising and advertisements of defendant are permitted by the Laws of the United States, by the Rules and Regulations of the Federal Home Loan Bank Board, an agency of the United States, and by the Federal Savings and Insurance Corporation, an agency of the United States.

Seventh Defense

The public has not been misled by Coast Federal Savings and Loan Association of Los Angeles.

Answer to Count Two of Complaint

First Defense

Count Two of the said complaint fails to state a claim against defendant upon which relief can be granted. [25]

Second Defense

I.

Answering paragraph III of Count Two of said complaint, defendant admits that it is and was at all times mentioned therein a savings and loan association organized under the provisions of 12 U. S. Code, Section 1464; defendant admits that it does not have, and has not had at any time mentioned in said complaint, any certificate from the Superintendent of Banks of the State of California, but defendant alleges it does not need any such certificate and that defendant is not subject to the jurisdiction of the plaintiffs, or either of them.

Except as herein expressly admitted, defendant denies each and every allegation contained in said paragraph.

II.

Answering paragraph IV of Count Two, defendant admits that it has circulated a paper known as "Coast Federal's Challenger." Defendant admits that in the October, 1949, issue of said paper there appeared the words set out on lines 5 through 19 on page four of said complaint. Defendant admits that some of said words have appeared in other issues of said paper.

Except as herein expressly admitted, defendant denies each and every allegation in said paragraph.

III.

Answering paragraph V of Count Two, defendant denies each and every allegation of fact contained therein, but neither admits nor denies the conclusions of law contained therein.

Third Defense

Defendant is an instrumentality of the United States Government, and all of such acts as were done by defendant were done by virtue of and under the authority of the government of the United States. [26]

Fourth Defense

The laws and regulations of the government of the United States provide for administrative remedies and procedures for alleged violations of law by federal savings and loan associations. Said remedies and procedures have not been resorted to by the plaintiffs, nor exhausted by them.

Fifth Defense

By custom and usage in the financial business, financial institutions do not usually use their full corporate name on signs, in advertising and advertisements, in transacting business or to indicate the nature of their business.

Sixth Defense

Any and all acts, advertising and advertisements of defendant are permitted by the Laws of the United States, by the Rules and Regulations of the Federal Home Loan Bank Board, an agency of the United States, and by the Federal Savings and Insurance Corporation, an agency of the United States.

Seventh Defense

The public has not been misled by Coast Federal Savings and Loan Association of Los Angeles.

Answer to Count Three of Complaint

First Defense

Count Three of the said complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

I.

Answering paragraph III of Count Three of said complaint, [27] defendant admits that it is and was at all times mentioned therein a savings and loan association organized under the provisions of 12 U. S. Code, Section 1464; defendant admits that it does not have, and has not had at any time mentioned in said complaint, any certificate from the Superintendent of Banks of the State of California, but defendant alleges it does not need any such certificate and that defendant is not subject to the jurisdiction of the plaintiffs, or either of them.

Except as herein expressly admitted, defendant denies each and every allegation contained in said paragraph.

II.

Answering paragraph IV of Count Three of said complaint, defendant admits that on page four of the October, 1949, issue of the "Challenger" in

a column entitled “ ‘Why I Hate Your Singing Commercial’ Winners . . .,” there appeared the following excerpt of a letter received by defendant:

“Mrs. Mable E. Smith, who made the constructive suggestion of a dignified slogan such as: ‘Our Business is Banking. Our Banking Is Business. We solicit your banking business.’ ”,

as shown by Exhibit “A” attached hereto.

Defendant denies each and every allegation contained in said paragraph, except as herein expressly admitted.

III.

Answering paragraph V of Count Three of said complaint, defendant denies each and every allegation of fact contained therein, but neither admits nor denies the conclusions of law contained therein.

Third Defense

Defendant is an instrumentality of the United States [28] Government, and all of such acts as were done by defendant were done by virtue of and under the authority of the government of the United States.

Fourth Defense

The laws and regulations of the government of the United States provide for administrative remedies and procedures for alleged violations of law by federal savings and loan associations. Said remedies and procedures have not been resorted to by the plaintiffs, nor exhausted by them.

Fifth Defense

By custom and usage in the financial business, financial institutions do not usually use their full corporate name on signs, in advertising and advertisements, in transacting business or to indicate the nature of their business.

Sixth Defense

Any and all acts, advertising and advertisements of defendant are permitted by the laws of the United States, by the Rules and Regulations of the Federal Home Loan Bank Board, an agency of the United States, and by the Federal Savings and Insurance Corporation, an agency of the United States.

Seventh Defense

The public has not been misled by Coast Federal Savings and Loan Association of Los Angeles.

Answer to Count Four of Complaint

First Defense

Count Four of the said complaint fails to state a claim against defendant upon which relief can be granted. [29]

Second Defense

I.

Answering paragraph III of Count Four of said complaint, defendant admits that it is and was at all times mentioned therein a savings and loan association organized under the provisions of 12

U. S. Code, Section 1464; defendant admits that it does not have, and has not had at any time mentioned in said complaint, any certificate from the Superintendent of Banks of the State of California, but defendant alleges it does not need any such certificate and that defendant is not subject to the jurisdiction of the plaintiffs, or either of them.

Except as herein expressly admitted, defendant denies each and every allegation contained in said paragraph.

II.

Answering paragraph IV of Count Four of said complaint, defendant admits that it has at various times advertised and referred to itself as "Coast Federal Savings"; except as herein specifically admitted, defendant denies each and every allegation of fact contained in said paragraph, but neither admits nor denies the conclusions of law contained therein.

III.

Answering paragraph V of Count Four of the complaint, defendant denies each and every allegation of fact contained therein, but neither admits nor denies the conclusions of law contained therein.

Third Defense

Defendant is an instrumentality of the United States Government, and all of such acts as were done by defendant were done by virtue of and under the authority of the government of the United States. [30]

Fourth Defense

The laws and regulations of the government of the United States provide for administrative remedies and procedures for alleged violations of law by federal savings and loan associations. Said remedies and procedures have not been resorted to by the plaintiffs, nor exhausted by them.

Fifth Defense

By custom and usage in the financial business, financial institutions do not usually use their full corporate name on signs, in advertising and advertisements, in transacting business or to indicate the nature of their business.

Sixth Defense

Any and all acts, advertising and advertisements of defendant are permitted by the Laws of the United States, by the Rules and Regulations of the Federal Home Loan Bank Board, an agency of the United States, and by the Federal Savings and Insurance Corporation, an agency of the United States.

Seventh Defense

The public has not been misled by Coast Federal Savings and Loan Association of Los Angeles.

Answer to Count Five of Complaint

First Defense

Count Five of the said complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

I.

Answering paragraph III of Count Five of said complaint, [31] defendant admits that it is and was at all times mentioned therein a savings and loan association organized under the provisions of 12 U. S. Code, Section 1464; defendant admits that it does not have, and has not had at any time mentioned in said complaint, any certificate from the Superintendent of Banks of the State of California, but defendant alleges it does not need any such certificate and that defendant is not subject to the jurisdiction of the plaintiffs, or either of them.

Except as herein expressly admitted, defendant denies each and every allegation contained in said paragraph.

II.

Answering paragraph IV of Count Five of said complaint, defendant admits that it has circulated a paper known as "Coast Federal's Challenger." Defendant admits that in the October, 1949, issue of said paper there appeared the words set out on lines 5 through 19 on page four of said complaint. Defendant admits that some of said words have appeared in other issues of said paper.

Except as herein expressly admitted, defendant denies each and every allegation in said paragraph.

III.

Answering paragraph IVa of Count Five of said complaint, defendant admits that on page four of the October, 1949, issue of the "Challenger" in a

column entitled “ ‘Why I Hate Your Singing Commercial’ Winners * * *, ” there appeared the following excerpt of a letter received by defendant:

“Mrs. Mable E. Smith, who made the constructive suggestion of a dignified slogan such as: ‘Our Business Is Banking. Our Banking Is Business. We solicit your banking business.’ ”

as shown by Exhibit “A” attached hereto. [32]

Defendant denies each and every allegation contained in said paragraph, except as herein expressly admitted.

IV.

Answering paragraph IVb of Count Five of said complaint, defendant admits that it has at various times advertised and referred to itself as “Coast Federal Savings”; except as herein specifically admitted, defendant denies each and every allegation of fact contained in said paragraph, but neither admits nor denies the conclusions of law contained therein.

V.

Answering paragraph V of Count Five of said complaint, defendant denies each and every allegation contained in said paragraph.

Third Defense

Defendant is an instrumentality of the United States Government, and all of such acts as were done by defendant were done by virtue of and under the authority of the government of the United States.

Fourth Defense

The laws and regulations of the government of the United States provide for administrative remedies and procedures for alleged violations of law by federal savings and loan associations. Said remedies and procedures have not been resorted to by the plaintiffs, nor exhausted by them.

Fifth Defense

By custom and usage in the financial business, financial institutions do not usually use their full corporate name on signs, in advertising and advertisements, in transacting business or to indicate the nature of their business. [33]

Sixth Defense

Any and all acts, advertising and advertisements of defendant are permitted by the Laws of the United States, by the Rules and Regulations of the Federal Home Loan Bank Board, an agency of the United States, and by the Federal Savings and Insurance Corporation, an agency of the United States.

Seventh Defense

The public has not been misled by Coast Federal Savings and Loan Association of Los Angeles.

Wherefore, defendant prays:

1. That plaintiffs take nothing by their suit;

2. That the Court decree that defendant is subject to the Laws of the United States;

3. That the Court decree that this defendant, and all Federal Savings and Loan Associations, are not subject to the control and jurisdiction of the plaintiffs or either of them;

4. That the Court decree that the Banking Code of the State of California referred to in the complaint as applied to this defendant is in conflict with and subject to the Laws of the United States;

5. That the defendant has judgment against plaintiffs for their costs incurred herein; and

6. For such other and further relief as to the Court shall seem proper.

Dated November 9, 1949.

COAST FEDERAL SAVINGS AND LOAN
ASSOCIATION OF LOS ANGELES,

By /s/ JOE CRAIL,
President.

CRAIL AND CRAIL,

By /s/ HARRY G. McMAHON,
Attorneys for Defendant. [34]

State of California,
County of Los Angeles—ss.

Joe Crail, being by me first duly sworn, deposes and says that he is President of Coast Federal Savings and Loan Association of Los Angeles, de-

fendant in the foregoing and above-entitled action; that he has read the foregoing Answer to Complaint and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

/s/ JOE CRAIL.

Subscribed and duly sworn to before me this 9th day of November, 1949.

[Seal] /s/ R. M. BLAKELY,

Notary Public in and for Said
County and State. [35]

COAST FEDERAL'S CHALLENGER

Second Floor, Merritt Building, 307 West Eighth Street • TUCKER 1351

Vol. 13, No. 27

October 3, 1949

Los Angeles 14, Calif.

STATISTICS

(This is probably going to be a very dull story, but Joe wants all you good Coast Federal members to read it, so that you will be informed about how your Association is doing.)

Anyway, here are some figures: Coast Federal has paid out in total dividends, since its beginning, the sum of \$7,324,258.72. That represents money which our savings account holders got just by putting their savings at Coast Federal.

Our reserves total \$5,053,429.56. Our bonds and cash on hand total \$13,292,986.40.

We have \$15,710,486.54 in G. I. Home Loans on our books, backed up by the federal guarantee.

We have a total of 28,140 savings account holders, with a total of \$58,449,615.27 in their Coast Federal savings accounts.

Since its organization Coast Federal has financed a total of 21,303 home loans — which means that all those families were helped to own their own homes by our home loan department.

We have a total of 15 blondes, 39 brunettes, and 6 red-heads — all beautiful and all smart — working here.

—•—

Young Man Makes Good

Rex (Bob) Johnson, manager of Coast Federal's Ninth and Hill office building, has made a meteoric rise to success in the last few weeks. With no previous record at managing anything taller than a one-story home, with wife and family, he



became manager of our 12-story office building about a year ago. Being a conscientious person, he joined the Building Managers' Association of Los Angeles, and at its recent election, to his amazement (maybe "consternation" is the word) he was elected a director of the association, and then vice-president! Congratulations, Bob, we knew you had it in you!

(He's not still in uniform, as in this picture, but he says this is his latest photo.)



Founders' Portraits Unveiled

Have you seen our two handsome new portraits, one on each side of the main entrance to our 9th and Hill office? We'd like you to notice them next time you're in. They are pictures of Justice Charles S. Crail and Congressman Joe Crail, founders of our Coast Federal Savings association.

Shown here at the unveiling ceremony are Marshall F. McComb, Associate Justice of the District Court of Appeals, and an early member of Coast Federal's board of directors; Thomas P. White, Presiding Justice of the District Court of Appeals; and Coast Federal's president Joe Crail. Joe is the son of Justice Charles Crail, and he, too, was one of the original founders of Coast Federal.

Many of you folks probably came to Coast Federal in the first place because of your friendship for "the Crails." Let us know how you like the portraits, next time you're in.

PLACE YOUR SAVINGS AT COAST FEDERAL...

For . . . **SAFETY**, with federal insurance up to \$5,000 per account;

For . . . **HIGHER RETURN ON YOUR SAVINGS**; 3% per annum is the current rate;

For . . . **CONVENIENCE**, and friendly service;

For . . . **AVAILABILITY** — you can get your money when you want it.

Accounts Opened by the 10th of the Month Earn from the 1st

PERSONNEL-LITIES

This month's orchid goes to Joan Goodwin, for looking so wholesome that a motherly-looking soul asked Joannie if she would go out with her 19-year-old son!

Carol Martin is now Mrs. John Strock, since August 5th, and looking terribly happy about the whole thing.

Recent anniversaries included C. E. Angstad, for 12 years service with Coast Federal; and Gwen Powers and Myron Marquand, for 14 years of slavery apiece.

New employees include Nisan Matlin, staff architect for the Loan Appraisal Section (he's single, girls!); Alice Stunton, for the 8th and Broadway Savings Department; Marjorie Mund, in the Law Office — Marjorie is a native Californian, UCLA graduate, who had ideas of joining the foreign consular service and thus seeing the world, but who got as far as Washington, D. C., and then homesickness overtook her — so she came back to California and thus to Coast Federal. Then there's Jim Bradshaw, new lawyer — and he's a bachelor (so far). Then, we've got that cute Pat Gambold, another native Californian; Joann Schmoeffer, who hails from Washington, Iowa; and pert Mary Andrich. Look over the new crop the next time you're in folks — we think they're okay. Incidentally, if you're wondering why we keep hiring new people, it's because our "old" people keep quitting us, to be bachelors, or get married, or stuff.

Wasn't that beach party fun!

The new howling season got off to a big start September 14th, with 50 Coast Fed folks showing up to man Ken Leathers' 10 new teams, plus the usual gallery of folks who can't bowl but who talk a good game. The teams are named, disrespectfully: Chuck's Comets, DA's Deadeyes, Johnny Jump-Ups, Laver's Lightnings, McBratney's Brats, Ruth's Ramblers, Searles' Sensations, Souter's Sharpies, Weston's Wonders, and Y. K.'s O.K.s. (How corny can you get, Ken?)

Sparklers have appeared on the fingers of Eleanor Searles and Wilma Dalton — and pretty soon they'll be "Mrs." instead of "Miss" — and we think the men in the case are mighty darn lucky.

"Bad pennies" who have returned to Coast Federal's staff after an absence of one sort or another, include Elsie Christensen, who says she'll be around again until the Navy transfers her husband away from here; Don Wilcox, who has moved himself and his family back from Oregon; Betty Xenos, who took a couple of days off to have a baby.

When you speak to Yvonne Durrant nowadays, the proper way to address her is "Mrs. Jay Burnett."

Leaving to meet the stock are Beverly Moodie and Jean Cover (as if you all didn't know that by now!)

Proud new home-owners on Coast Fed's staff are the George Edwards family, Ken Leathers, Flo and Bill Stage — and Ralph and Kay Kinnings are trying to find a lot to park their dream home.

COASTER



LESLIE R. LUMLEY

Coast Federal's Man-of-the-Month this month is a member of our Board of Directors, Leslie Robert Lumley. Les has been a director of Coast Federal since 1947 and is one of Coast Federal's biggest assets, with his wisdom about business and the bond market, and economic trends and stuff. We want you all to become better acquainted with him, so — well, read this:

Les was born in Urbana, Illinois, which he says is a town so small that nobody has ever heard of it. He was graduated from the University of Illinois in 1916, majoring in agriculture and business administration. And here's an interesting thing: he worked his way through the university as an automobile dealer, taking the Chevrolet and Oldsmobile agency in Champaign, Illinois, while a sophomore!

In 1917 he went into the Air Corps in the first World War. Then, in 1920 and 1921 he was sales manager for the Kansas City Refining Company at (by an odd coincidence) Kansas City. While he was there he attended law school for three years, but didn't graduate — decided he liked business better than law, probably.

Then in 1921 he came to California, and went back to his first love — the automobile business (having decided by that time that the automobile was here to stay) — taking the Oldsmobile agency in Anaheim. In the fall of 1922 he moved to Huntington Park with his Oldsmobile agency — and has been there ever since. He is now the "oldest" Oldsmobile dealer in Southern California, except one — but he doesn't like the sound of that "oldest" part — so we promised to point out that that doesn't refer to his age.

Mr. Lumley has sold many other makes of cars, along with Oldsmobile, but now he has settled down to Oldsmobile and Cadillac.

His many titles include: president of Leslie R. Lumley, Inc., Olds and Cad agency in Huntington Park; president of Park Motors, Pontiac agency in Huntington Park (which he has operated for 15 years!); president of Leslie R. Lumley Capital Company, a finance company and insurance brokerage business.

Les met Aileen Berry of San Francisco, while on a pleasure cruise somewhere, and married her in 1937. They have an 11-year-old redheaded son, Leslie, Jr., who, for some reason, is always called "Jason." Big Les's hobbies, outside of business, are swimming and sailing.

Les is a friendly sort of guy, and he'd be pleased if any of you other Coast Federal folks would drop in and say "hello" when you're down around his place of business.

The Letter Box...

"Hello, Joe: You know I am one of the most serious, sober-minded persons you ever saw, yet when I pick up your CHALLENGER to read I commence to laugh. For its size there are more laughs in that small sheet than any I ever read, and after looking at Joe Crail's picture I feel like I know him already. I read about everything in the little sheet, even the Want Ads, although the only thing in that department in which I am interested is widows — not too old — and I never see anything like that printed.

Here I am up in the Siskiyou, a-straddle of the Calif.-Oregon line where we have frosts any month of the year. Have lived mostly in a man's world; eleven years in the mineral belt on the eastern fringes of Death Valley; six years along the straits of Juan De Fuca looking over the blue ridges in Canada's back yard; and a spell on Moose Creek in Alaska near the Chickaloon big game district. I sometimes wonder what it is like in a woman's world, but I don't suppose the woman lives who would enjoy the solitary places that I like.

I have always been somewhat ashamed of my first name. For some reason my parents bestowed on me the girlish name of Alva. Now my school-kid friends of Port Angeles, Wash., during the time I was in contact with civilization there — both boys and girls, large and small — did a much better job naming me. They called me "Tonopah, the hard-rock miner" and if I came into sight, 'tho it be far down the street, never failed to yell at me "hello Tonopah" and sometimes added "you hard-rock miner."

A. E. STOVALL
Hilts, California."

Thanks for your kind words, Tonopah, and for letting us print your interesting letter. We'll bet there's a Coast Federal widow who'd like to correspond with you. (This is "out-of-bounds" for you Coast Fed employees.)

ANOTHER JINGLE WINNER...

"Because of service at its best,
Coast is the largest in the West;
Now, to serve you better still,
Another location, 9th and Hill."

And for that sonorous sonnet, Mrs. Kathy Tatsch wins Fifty Bucks.

**SAVE with SAFETY
and HIGH RETURN**
at
**COAST FEDERAL
SAVINGS**

YOUNG COASTERS



We thought you might like to see what the 1970 staff of Coast Federal will look like — only, of course, they'll be a little older then. So here are some sons and a daughter of our current staff, who, we hope, will some day be down here taking the reins of management away from their tired old dads and mothers. They already have their Coast Federal savings accounts — with higher returns, insured safety, availability, convenience and other stuff.

Above is Michael James Xenos, born March 21st, son of Betty Xenos of, our Accounting Department. From the look of that Irish puss, we think you named him right, Betty.

On our right is Ralph Norton Kinnings, Jr., born April 25th, and called "Kippy." His pop is a Coast Federal Loan Counsellor, and Kippy already talks faster than the old man, so he's a cinch for the 1970 staff.

Down below sit Gale Susan and Gary Christopher Blunden — we're not sure which — born November 9th. Our guess is that the fellow waving his arms is probably Gary, and that the admiring "aren't you wonderful" look is on the face of sister Gale Susan.

Pretty cute crop this year, don't you think?



Herb Says...

Herb Mailliard, Loan Counselor Extraordinary, confides that Mr. Charles King came in the other day, to sign up some papers about something, and handed to Herb one of those "lucky records" which we dealt out back in July. Herb took off for the basement, record in hand, and soon came struggling up the stairs carrying 50 feet of green rubber garden hose. The following sharp conversation ensued:

Mr. King: "Is that the biggest prize you've got?"

Herb: "Well, I don't know that it's the biggest, but it certainly is the longest!"

Herb comments that Coast Federal goes to "great lengths" to keep our customers happy.



MARY JEAN'S STILL GOT A SAFE DEPOSIT BOX FREE FOR YOU

If your Coast Federal savings account has \$5500.00 or more in it you may have the free use of a safe deposit box in Coast Federal's handsome vault. Not only do you have a safe place to park your bonds or the diamond tiara you inherited from Great-aunt Mehitabel, but also you can sit down and cool off and rest your feet and gossip with Mary Jean about her cat, Mitzi.

We've got different size boxes, which you get in accordance with your size account, to-wit: \$25,000 or over entitles you to a box 10" x 5"; \$15,000 plus gets you a 10" x 3"; — and so on, down to 5" x 2" for a mere \$5500. That doesn't sound big enough — well, Mary Jean reports that all of them are 22" long.

That's at our Ninth and Hill office, by the way.

**Your Savings Account
Opened by the 10th of
the Month, Earns Interest
from the 1st WHEEL**

WANT ADS

I have English Ivy starts to give away, free, if anyone will come and get them. Please call me at SYcamore 9-6504 before you come. Mrs. Matthews, 1101 Columbia, South Pasadena.

FOR SALE: Custom made bassinet, like new, \$15. Also Hotpoint refrigerator, 6 cubic ft. '41 model. Mrs. D. A. Matera, AX 1-6357.

FOR SALE: Dohrmeyer Mixer (new), Majongg set complete with racks, moneys, etc., electric juicer. All very reasonable. WA 7885.

WANTED: Antique buttons. Phone giving description. Albany 5093.

FOR SALE: '43 Eastern built Glider house trailer; 2 rooms, sleeps 4. Two entrances. Good condition. Terms if desired. Sacrifice at \$450. Evenings or week-ends only. Santa Monica 722-16 (Venice).

FOR SALE: Haviland China dinner set, imported from France, 118 pieces, 18-kt. gold rim pattern. Also Gay Nineties party dress, size 14 or 16, and man's Tuxedo of early date, too, about size 36; both in 1st class condition, could be used as costumes. All very reasonable. SUN-set 2-1005.

WANTED: Late edition of "World Books" for children. Call Monrovia 1-3251.

FOR SALE: Very reasonable, several ladies' black dresses, size 40, and beautiful 5-skin blended baum martin furs, has never been worn. Great sacrifice, Whitney 1491.

FOR SALE: 24 very unusual and beautiful hand-painted bread and butter plates, \$75. RE 2-7380 mornings or late evenings.

FOR SALE: 4 hand-hammered antique bronze plaques, 12" in diameter. Also, white evening gown, size 36, and man's brown wool ulster with belt. Worn once. EXposition 9516.

FOR SALE: ¾ size violin and case, excellent condition, \$40. JEfferson 3764 or JEfferson 1452.

FOR SALE: Squirrel lock cape \$40; winter turquoise blue coat \$40. FE 1757.

FOR SALE: Infra red lamp \$25; pet basket \$3.50; awing \$5; 2 evening dresses, white crepe \$15, Delft blue lace \$15, 36 size; 1 long and wide silk velvet scarf, trimmed in metal cloth for evening wear. PL 1-4061.

ROLLER SKATING CLUB. All over 20 years of age are eligible to join. If interested, phone OL 0105.

WILL STORE piano with best of care. EX 0391.

FOR SALE: 9-cubic ft. Westinghouse refrigerator, in A number one condition, good buy for interested parties. YO 1227.

WANTED: Good cook for large family, must be good natured and like children. Live in. Top salary. RYan 1-6157.

COAST TASTIES

Olivia Keller comments that the most observant person he's ever heard of was the historian who noticed that Lady Godiva had a horse with her.

PROSECUTOR: "Now tell the court how you came to take the car."

DEFENDANT: "Well, the car was parked in front of the cemetery, so naturally I thought the owner was dead."

MONROE MORCAN: "Where'd you get the black eye, George? Were you in a fight?"

GEO. ROBERTSON: "Yeah. It was this way: I was in a phone booth talking to my girl last night, when a guy grabs me by the neck and yanks me out of there."

MONROE: "That made you pretty mad, huh?"

GEO.: "Well, yes, but I didn't get really mad until he reached back in and yanked out my girl, too."

STEVE: "Say, doc, do you remember last year when you cured my rheumatism? You told me to avoid dampness."

DOC: "That's right. What's wrong now?"

STEVE: "Well, can I take a bath now?"

Believe it or not but our president, Joe Crall, used to teach a Sunday School class. After the services one Sunday morning he was approached by an old lady who expressed great appreciation over his discourse. "You can never know what your talk meant to me," she said. "Why, it was just like water to a drowning man."

BILL: "Joan says she thinks she could learn to love me."

CHUCK: "You don't look very happy about it."

BILL: "Well, it's going to be pretty expensive. Last night I took her to a movie and to a night club. The first lesson cost me about \$15."

Freddie, four years old, came down stairs bellowing loudly. "What's the matter?" asked his mother.

"Papa was hanging a picture and just hit his thumb with the hammer," said Freddie.

"That's not serious," soothed his mother.

"A big boy like you shouldn't cry about that. Why didn't you just laugh?"

"I did," howled Freddie.

BILL KACHIC: "Say, Jim, would you like to see a model home?"

JIM BRADSHAW: "Sure, what time is she through work?"

DON COLLINS: "I've invented a device for looking through a brick wall."

LEE GRAVERSON: "What's it called?"

DON: "A window."

MARJORIE MOCK: "Where are you going in such a hurry?"

ERNIE MOCK: "Over to Don's house. He just telephoned to ask if I could lend him a cork screen, and I am taking it over myself."

MARJORIE: "Couldn't you send it over?"

ERNIE: "Mrs. Mock, the question you asked me shows why most women are unfit to lead armies and make quick decisions in business deals involving millions. When the psychological moment arrives, they don't know what to do with it."

"Why I Hate Your Singing Commercial" Winners ...

As usual, our Committee - on - Deciding - on - Contests - Winners - couldn't make up its mind about which of the letters on the darned singing commercial was best - so instead of awarding one \$25 prize, we're awarding six \$25 prizes! And only grim determination on the part of budget-balancing Controller Bob Souter kept them from sending \$25 to every one of the hundreds of letter-writers.

Here are the winners. I wish we had space to print the whole of their very interesting letters.

Mrs. Robert G. Host, who complained because her baby's first words were "Los Fed saves me" - instead of "Mama."

Mrs. Mable E. Smith, who made the constructive suggestion of a dignified slogan such as "Our Business is Banking. Our Banking is Business. We solicit your banking business."

Bob Downer of Laguna Beach, who made some valuable suggestions, and commented that "there's no mention at all of the most important thing about Coast Federal - the friendly people. Most banks and loan associations seem to regard you as a criminal if you have any money to deposit and a bum if you make a withdrawal or loan. You feel like you owe every clerk and the manager an apology every time you walk in the door of those places. Two years ago I left Los Angeles, and I withdrew my savings from Coast Federal to buy a car and trailer, but I left a dollar there to keep my account open. The High Cost of Living hit me so hard that sometimes I wish I had that back to spend, but it stays at Coast Federal just so I can say I'm a depositor. That's how much Coast Federal's friendly spirit means to me."

Carol M. Holt, for her poetic entry, which really rhymed and wanned, and also made good sense.

Mrs. C. W. Cook - and we're writing to ask her if we may print her letter in its entirety - it's that worthwhile.

Alice B. Pearce - who says she hates the commercial because it's "such a catchy little tune" that it made her transfer her savings "from one of those places that give you so little interest you just know they are bored to carry the account," to Coast Federal. She says, "Now when I get a desire for a new hat or even a much needed suit, I can't get it. It was so easy before to get it; I wasn't getting any interest to speak of anyway. But now, oh that interest! So I'll just brush up my old hat

MISCELLANY ...

The Lost and Found department reports the following items now on hand - did you lose any of them?

Spectacles
Pearl bracelet
Gold pin with pearls
California Bank check book
Tiny lapel pin
clip-on sunglasses
1 silver earring
Pair of gloves
2 pair of panties (hey!)

**DON'T FORGET THAT
COAST FEDERAL IS
OPEN MONDAY NIGHTS
UNTIL 9 FOR
YOUR CONVENIENCE.**

The Postman brought this:

"I lika de good old Joe,

I lika da mon dat he shou.

I passa ma book an getta ma mon.

And what do you tink, dey call it fun.

WELL WISHER"

Come on out from behind that anonymity and let us know who you are, you budding poet. We like your poetry.

and suit and cuss the singing commercial, but that money stays right in Coast Federal."

Bob Souter points out that we haven't really quoted any of the uncomplimentary (sometimes vitriolic) things which were said about the singing commercial in these winning letters. Well, there were plenty of them - and we appreciate the helpful spirit in which they were written - and we're overwhelmed our singing-commercial-happy advertising man with your complaints; and thanks!

**OPEN YOUR COAST FEDERAL SAVINGS
ACCOUNT NOW!**

COAST FEDERAL SAVINGS AND LOAN ASSOCIATION

The Largest in the West

Joe Crall, President

307 WEST 8th STREET

NINTH AND HILL STREETS

TUcker 1351

Affidavit of Service by Mail Attached.

[Endorsed]: Filed November 10, 1949.

[Title of District Court and Cause.]

PRE-TRIAL MEMORANDUM OF DEFEND-
ANT COAST FEDERAL SAVINGS AND
LOAN ASSOCIATION OF LOS ANGELES

Summary of Dispute

The moving plaintiff in this action is Maurice C. Sparling, as the Superintendent of Banks of the State of California.

The defendant is Coast Federal Savings and Loan Association of Los Angeles, a Federal savings and loan association organized and incorporated by the Government of the United States under 12 United States Code 1464.

The action is civil in nature and was originally brought in the Superior Court of Los Angeles County in the State of California, a State court.

The defendant petitioned this Honorable Court for removal, as defendant believes that this action is one of which the District Courts of the United States have original jurisdiction.

The moving plaintiff complains that: [41]

(1) the defendant is not a bank as defined by California law;

(2) the defendant has no certificate from the plaintiff to engage in business;

(3) the defendant has no authority or right from California to engage in banking business or solicit or receive money on deposit;

(4) the defendant is subject to the jurisdiction of the plaintiff; and

(5) the defendant represented itself as a California Savings Bank and so transacted business.

The defendant believes that:

(1) the plaintiff has no jurisdiction over the defendant;

(2) the Government of the United States exercises full, complete and exclusive jurisdiction over defendant;

(3) the defendant violated no California law;

(4) the California laws cited by the plaintiff do not apply to Federal savings and loan associations, were not intended to apply to Federal savings and loan associations, and if the intention was that such statutes apply to Federal savings and loan associations, such statutes would be in conflict with Federal law;

(5) if the defendant did act contrary to California statutes, it did so while exercising the privileges and powers given it by the Federal Home Loan Bank Board, and such privileges and powers are not subject to interpretation, limitation or extension by a State officer;

(6) all the acts of the defendant are subject to review by the Federal Home Loan Bank Board and by the Federal Savings and Loan Insurance Corporation;

(7) the subject of regulation of Federal savings and loan associations is one of nation-wide importance, and if the various agencies of the several States could each set regulations and limitations for the Federal savings and loan associations [42] within their borders, the effectiveness of nation-wide regulation by the various agencies of the United States, given by Acts of the Congress of the United States, would be curtailed; and that

(8) there is a clear path of administrative remedy set up for the moving plaintiff to follow, which the moving plaintiff has not followed, except in one instance. In that instance the moving plaintiff notified the agent of the Federal Home Loan Bank Board that the size of the word "Bank" as part of the phrase "Member Federal Home Loan Bank" on the windows of the office of the defendant appeared to be of disproportionate size. When the agent of the Federal Home Loan Bank Board suggested that such be changed, the defendant complied.

The defendant admits that

(1) it has used, and continues to use, in its advertising less than all of its full name, Coast Federal Savings and Loan Association of Los Angeles;

(2) it has represented itself, and continues to so represent itself, as a member of the Federal Home Loan Bank, which it is;

(3) it has used the word "Savings" as part of its corporate name, which contains the word "Savings"; and that

(4) it has used the word "Bank" as part of the phrase "Member Federal Home Loan Bank." The defendant denies that

(1) it has represented itself as a California Savings Bank; or that

(2) the moving plaintiff, or the People of the State of California, or any of them, have jurisdiction over the defendant.

Statement of Points of Law

I. The Bank Act and Banking Code were not intended to apply to Federal savings and loan associations.

A. A statute should be so construed as to be constitutional [43] in its entirety.

23 California Jurisprudence, "Statutes," sec. 131, p. 757.

5 California Jurisprudence, "Constitutional Law," sec. 46, p. 615.

Miller v. Municipal Court, 22 Cal. 2d 818, 142 Pac. 2d 297, (1943).

Shealor v. Lodi, 23 Cal. 2d 647, 145 P. 2d 574, (1944).

1. The Banking Code is limited in its application to national banking associations to so much of the code as is not inconsistent with Federal law. No

such partial application is provided for as to Federal savings and loan associations.

California Banking Code, sec. 100.

B. Statutes which relate to the same general subject matter must be read and construed together even though passed at different times.

23 California Jurisprudence, "Statutes," sec. 163, p. 785.

Old Homestead Bakery v. Marsh, 75 Cal. App. 347, 242 Pac. 749, (1925).

1. According to California legislative declaration, Federal savings and loan associations are outside the jurisdiction and supervision of the State of California.

Deering's General Laws, Act 986, secs. 12.11, 12.12.

2. In particular, the statutory provisions cited in Count IV, paragraph IV, of the complaint have reference only to State building and loan associations.

Deering's General Laws, 1931, Act 986, secs. 2.02 and 12.06.

Deering's General Laws, 1944, Act 986, secs. 2.02 and 12.06.

Deering's General Laws, 1944, Act 986, secs. 1.01 and 1.02. [44]

II. All acts of defendant complained of in the complaint have been done under Federal authority.

Home Owners' Loan Act of 1933, sec. 5 (12 USC 1464).

Rules and Regulations for the Federal Savings and Loan Systems, secs. 202.2, 202.3, 203.6 of Title 24 C.F.R. prior to 1949.

Charter of Coast Federal Savings and Loan Association of Los Angeles, secs. 3, 6 and 7.

Rules and Regulations for the Federal Savings and Loan System effective August 15, 1949, secs. 141.3, 141.4, and 141.5 of Title 24 C.F.R.

“Suggestions for Federal Savings and Loan Associations in Giving Information to the Public,” issued by the Federal Savings and Loan Insurance Corporation in 1938.

III. State laws attempting to regulate Federal savings and loan associations are invalid when they conflict with Federal law.

McCulloch v. Maryland, 17 U. S. (4 Wheatley) 316, 4 L. Ed. 479, (1819).

Davis v. Elmira Savings Bank, 161 U. S. 275, 40 L. Ed. 700, 16 Sup. Ct. 502, (1895).

Easton v. Iowa, 188 U. S. 220, 47 L. Ed. 452, 23 Sup. Ct. 288, (1903).

First National Bank of San Jose v. California, 262 U. S. 366, 67 L. Ed. 1030, 43 Sup. Ct. 602, (1923).

First Federal Savings and Loan Association of Wisconsin vs. Finnegan, 19 Fed. Supp. 678 (Wisc. 1937); affirmed 97 Fed. (2d) 831, 121 A.L.R. 99 (1938); constitutional question to Attorney General certified, 305 U. S. 564, 83 L. Ed. 355, 59 Sup. Ct. 92;

certiorari dismissed 305 U. S. 666, 83 L. Ed. 432, 59 Sup. Ct. 363.

Bridewell, "Applicability of State Laws to Federal Savings and Loan Associations," 6 John Marshall Law [45] Quarterly, pp. 508-521, June, 1941.

IV. The Federal government has so occupied the field of regulation of Federal savings and loan associations that the State is without jurisdiction.

Home Owners' Loan Act,

Secs. 5(a), 5(d) and 5(f) (12 U.S.C. 1464).

Rules and Regulations for the Issuance of Accounts by the Federal Savings and Loan Insurance Corporation, sec. 161.5(e) of Title 24 C.F.R. (Formerly 24 C.F.R. 301.7(e).)

First Federal Savings and Loan Association of Wisconsin vs. Finnegan, 19 Fed. Supp. 678 (Wisc. 1937); affirmed 97 Fed. (2d) 831, 121 A.L.R. 99 (1938); constitutional question to Attorney General certified, 305 U.S. 564, 83 L. Ed. 355, 59 Sup. Ct. 92; certiorari dismissed 305 U.S. 666, 83 L. Ed. 432, 59 Sup. Ct. 363.

First Federal Savings and Loan Association of Meriden v. Danaher, Commissioner, 128 Conn. 98, 20 At. 2d 455 at 464 (1940).

John Fahey v. Mallonee,

332 U.S. 245, 256; 91 L. Ed. 2030, 2040; 67 Sup. Ct. 1552, 1557 (1946).

Linde Air Products Co. v. Johnson,

77 Fed. Supp. 656, 658 (1948).

V. Plaintiff has available administrative remedies.

Rules and Regulations for the Federal Savings and Loan System (effective August 15, 1949), sec. 142.2 of Title 24 C.F.R.

VI. Administrative remedies must be exhausted before a court action may be properly commenced.

Gates v. Woods,

169 Fed. (2) 440 (4 C.C.A. 1948).

Brown v. Lee,

51 Fed. Supp. 85 (Calif. S.D. 1943).

Dated February 17, 1950. [46]

CRAIL AND CRAIL,

By /s/ HARRY G. McMAHON,

An Associate of the Firm.

[Endorsed]: Filed February 17, 1950. [47]

[Title of District Court and Cause.]

MEMORANDUM OF PLAINTIFFS' VIEWS FOR INFORMAL PRE-TRIAL

Plaintiffs' views herein may be briefly summarized as follows:

1. Section 3390 of the California Banking Code provides that:

“No person which has not received a certificate from the superintendent authorizing it to engage in the banking business shall solicit

or receive deposits, issue certificates or deposit with or without provision for interest, make payments on check, or transact business in the way or manner of a commercial [48] bank, savings bank, or trust company.”

2. Section 3391 of the same Code provides that no such person “shall advertise that it is accepting deposits, and issuing notes or certificates therefor, or make use of any office sign, at the place where its business is transacted, having thereon any artificial or corporate name, or other words indicating that such place or office is the place or office of a bank or trust company, that deposits are received there or payments made on check, or any other form of banking business transacted,” nor

Shall “such person make use of or circulate any letterheads, billheads, blank notes, blank receipts, certificates, or circulars, or any written or printed paper, whatever, having thereon any artificial or corporate name or other words indicating that such business is the business of a bank, commercial bank, savings bank, or trust company, or transact business in such a way or manner as to lead the public to believe that its business is that of a bank or trust company.”

3. Section 3393 of the same Code provides that no building and loan association shall advertise or hold itself out to the public as a savings bank.

4. Section 3395 of the same Code makes any violation of any of the foregoing provisions sub-

ject to a penalty of \$100.00 a day and also authorizes an injunctive proceeding.

5. Defendant is a Federal Savings and Loan Association organized under authority of the Federal Home Loan Bank Board pursuant to 12 U.S.C.A. 1464.

6. The powers and duties of such savings and loan associations are not too clearly set forth by the Federal Act. However, as stated in section 1464 they are primarily "to provide local mutual thrift institutions in which people may [49] invest their funds and in order to provide for the financing of homes." (Emphasis added.) Such savings and loan associations are generally considered as synonymous with building and loan associations. (See Hopkins Fed. S. & L. Assn. v. Cleary (1935), 296 U.S. 315, 335-6, 56 S. Ct. 235, 240, 80 L. Ed. 251; First Fed. S. & L. Assn. v. Finnegan (1937), 19 Fed. Supp. 678, (1938) 97 Fed. 2d 831.) Such savings and loan associations automatically become members of the Federal Home Loan Bank of the district in which the association is located.

7. Subdivision (b) of section 1464 states of such associations that, "No deposit shall be accepted and no certificates of indebtedness shall be issued except for such borrowed money as may be authorized by regulations of the board."

8. Section 102 of the California Banking Code defines "bank" as follows:

"The word 'bank' as used in this code means any incorporated banking institution which

shall have been incorporated to conduct the business of receiving money on deposit, or transacting a trust business as herein defined. The soliciting, receiving, or accepting of money or its equivalent on deposit as a regular business shall be deemed to be doing a commercial or savings bank business whether such deposit is made subject to check or is evidenced by a certificate of deposit, a passbook, a note, a receipt, or other writing; provided, that nothing herein shall apply to or include money or its equivalent left in escrow, or left with an agent pending investment in real estate or securities for or on account of his principal. It shall be unlawful for any corporation, [50] partnership, firm, or individual to engage in or transact a banking business within this State except by means of a corporation duly organized for such purpose."

9. Section 104 defines "savings bank" as follows:

" 'Savings bank' means a bank or the savings department of a bank authorized to receive savings deposits repayable with or without interest; to lend money on the security of real or personal property; to buy and sell for the account of customers and, if eligible for investment, for its own account, securities, gold and silver bullion, gold coins, and bills of exchange; and generally to transact a savings bank business."

10. One of the commonly accepted functions

characterizing banking business is the acceptance of deposits payable on demand. Therefore, in view of the express prohibition contained in 12 U.S.C.A. 1464(b) and the fact that there is no authorization giving to Federal savings and loan associations the power to do a banking business, it is plaintiffs' position that the defendant is not a Federal bank nor authorized by a Federal charter to do a banking business.

A bank is an institution which receives and pays out deposits. *Moran v. Cobb* (1941), 120 Fed. 2d 16, 22; *Staunton Industrial Loan Corp. v. Commissioner of Internal Revenue* (1941), 120 Fed. 2d 930, 933-4; *Rosenblum v. Anglim* (Cal., 1943), 135 Fed. 2d 512, 513; *Kansas v. Hayes* (1932), 62 Fed. 2d 597, 600; *American Sugar Refining Co. v. Anderson* (1937), 20 Fed. Supp. 55, 56.

"Necessary element of 'banking business' in law excepting bank corporations from bankruptcy is receipt of [51] deposits for use in business." (Syllabus.) "In short, while there may be other attributes which a bank may possess, yet a necessary one is the receipt of deposits which it may use in its business." *Gamble v. Daniel* (1930), 39 Fed. 2d 447, 450-1.

In *State v. Leland* (1904), 91 Minn. 321, 98 N.W. 92, 93, the court said that "The receiving of deposits, to be kept, and returned on demand, is the generally acknowledged feature of every bank, * * *, whereby its profits are obtained and business success accomplished; * * *"

"Strictly speaking, the term 'bank' implies a

place for the deposit of money, as that is the most obvious purpose of such an institution.” *Western Investment Banking Co. v. Murray* (1899), 6 Ariz. 215, 56 Pac. 728, 731.

In passing upon a provision of the Internal Revenue Law the United States Supreme Court in *Oulton v. German Savings and Loan Society of California* (1872), 84 U.S. 109, 118-119, 21 L. Ed. 618, in speaking of banks said:

“Banks in the commercial sense are of three kinds, to wit: 1, of deposit; 2, of discount; 3, of circulation. Strictly speaking the term bank implies a place for the deposit of money, as that is the most obvious purpose of such an institution. Originally the business of banking consisted only in receiving deposits, such as bullion, plate, and the like, for safe-keeping until the depositor should see fit to draw it out for use, but the business, in the progress of events, was extended, and bankers assumed to discount bills and notes and to loan money upon mortgage, pawn, or other security, and at a still later period to issue notes of their own intended as a circulating currency [52] and a medium of exchange instead of gold and silver. Modern bankers frequently exercise any two or even all three of those functions, but it is still true that an institution prohibited from exercising any more than one of those functions is a bank in the strictest commercial sense, and unless such a bank is brought within the proviso

under consideration, is equally subject to taxation as if authorized to make discounts and issue circulation as well as to receive deposits.”

11. Defendant is not authorized under the Federal Charter and Laws to do a banking business. Insofar as defendant lawfully exercises the powers and functions with which it is invested under the Federal Act, it is not subject to State regulation, but it may not outside of such lawful and authorized powers engage in any activities or operation contrary and in conflict with State law. All that plaintiff seeks here is to prevent defendant from leading the public to believe that it is engaged in a banking business.

12. Attached to the complaint as Exhibit “A” are photographs of defendant’s place of business, which photographs in our opinion quite plainly show that defendant by means of the differentiation in the size of type used in the lettering on its offices and the emphasis thereby placed upon a portion of its name “Coast Federal Savings” and the word “Bank” created in the minds of the public the impression that it was engaged in a banking business.

13. In addition thereto, in its advertising by means of using only the portion of its name “Coast Federal Savings” and leaving out the balance thereof “and Loan Association” and by using the words “Bank” and “Banking” sought to and [53]

did lead the public to believe that it was engaged in a banking business.

Respectfully submitted,

FRED N. HOWSER,
Attorney General of the
State of California;

WALTER L. BOWERS,
Assistant Attorney General;

BAYARD RHONE,
Deputy Attorney General;

/s/ WALTER L. BOWERS,
Assistant Attorney General,
Attorneys for Plaintiff.

[Endorsed]: Filed February 23, 1950. [54]

[Title of District Court and Cause.]

STIPULATION AND ORDER

Whereas, due to inadvertence, copies of the photographs which, as Exhibit A, were made a part of the complaint of plaintiffs herein when the within action was instituted in the Superior Court of the State of California, were omitted from the duplicate copy of said complaint when said action was removed on petition by defendant to this Honorable Court, and further;

Whereas, the photographs attached hereto are true copies of the aforesaid photographs, making,

in all, a complete and true copy of Exhibit A of plaintiffs' complaint herein;

Now, Therefore, It Is Stipulated and Agreed by and between the undersigned parties, as represented by their counsel, that the photographs attached hereto are in fact a complete and true copy of Exhibit A of plaintiffs' complaint herein, and that they may be now filed as such with the court with like effect as though [56] they had in fact been annexed to and filed with the aforesaid duplicate copy of plaintiffs' complaint.

Date March 8, 1950.

CRAIL AND CRAIL,

By /s/ HARRY G. McMAHON,
An Associate of the Firm.

Date March 8, 1950.

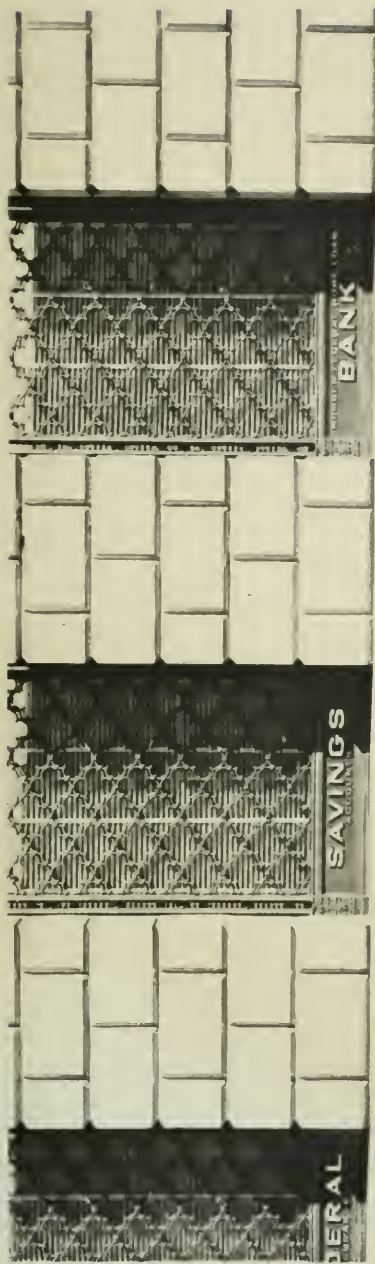
/s/ WALTER L. BOWERS
Assistant Attorney General.

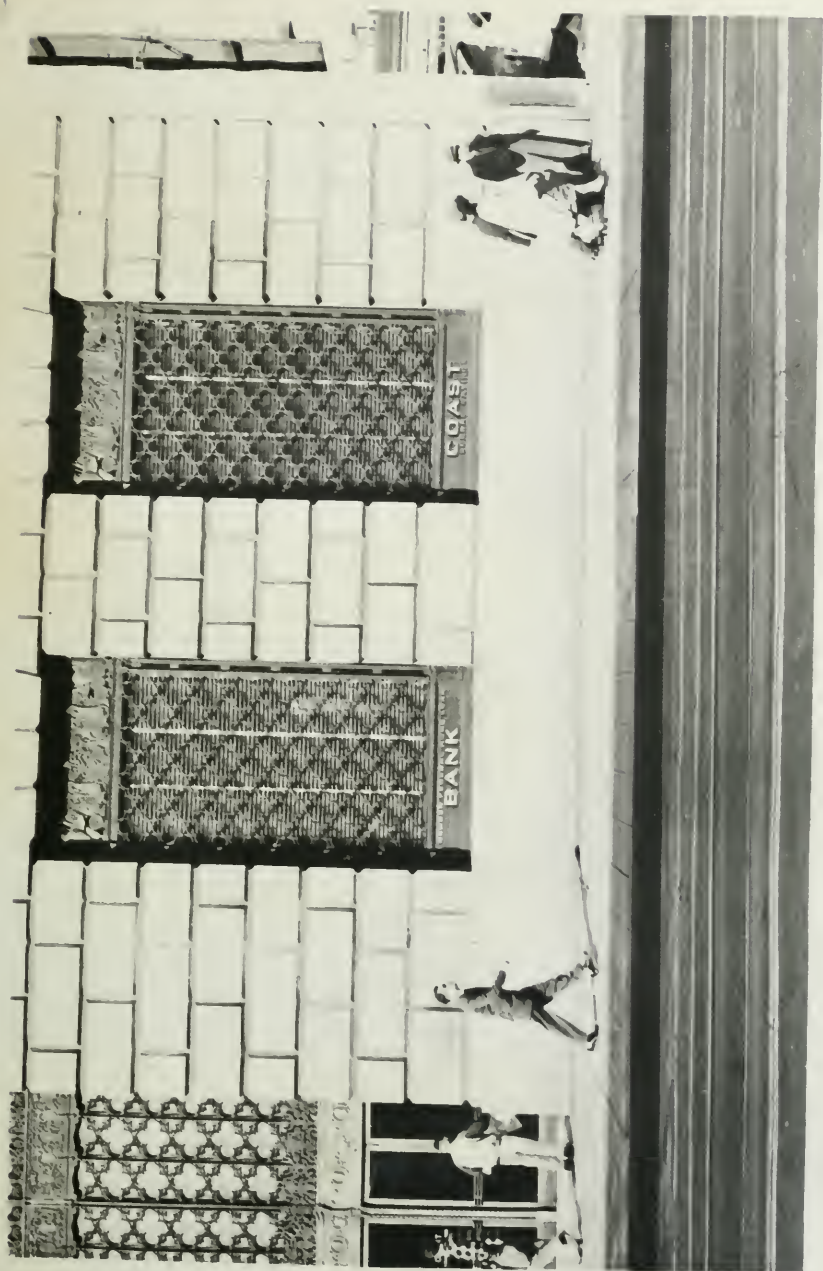
It is so ordered March 17, 1950.

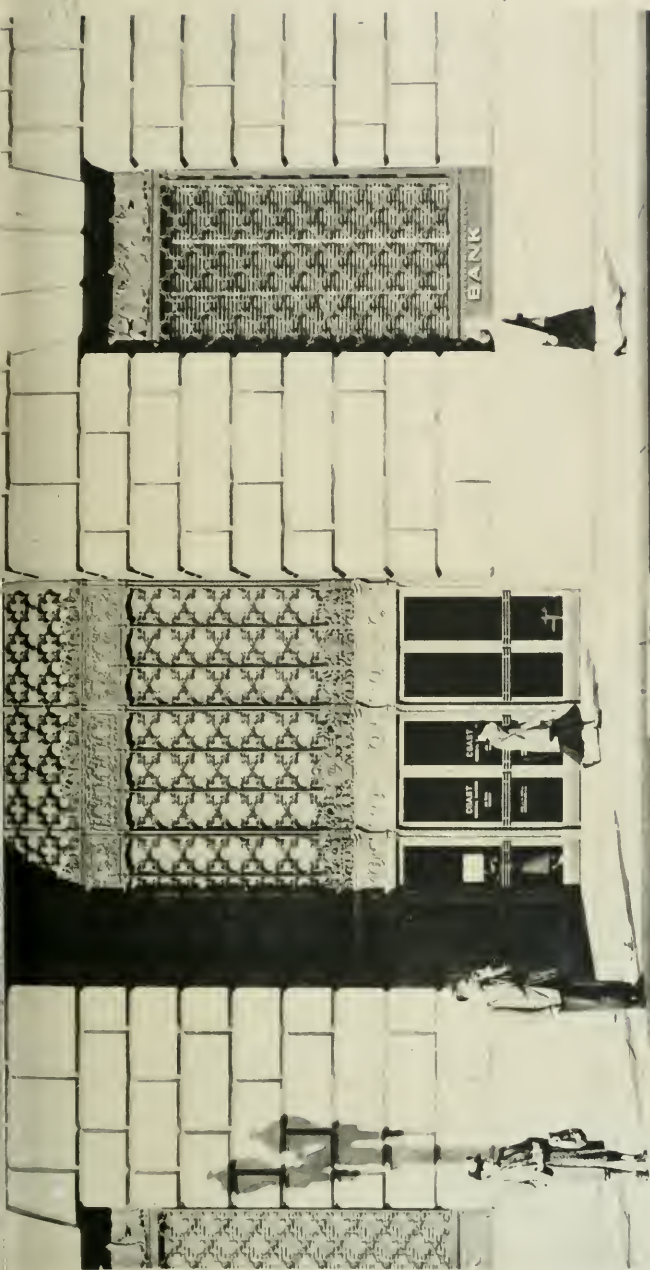
/s/ JAMES M. CARTER,
Judge. [57]



EX - 19 A









[Enforced]: Filed March 17, 1930.

[Title of District Court and Cause.]

SUPPLEMENTAL PRE-TRIAL MEMORAN-
DUM OF DEFENDANT COAST FEDERAL
SAVINGS AND LOAN ASSOCIATION OF
LOS ANGELES

A. Preliminary Statement—The views expressed by defendant in its original pre-trial memorandum have not altered with the passage of time. Defendant reaffirms them at this point as though they were set out at length herein.

B. Reply to “Memorandum of Plaintiff’s Views for Informal Pre-Trial.”

(1) Defendant concedes that Plaintiff has accurately quoted from Sections 3390, 3391, 3393, 3395, 102, and 104 of the California Banking Code. The materiality of these statutes to the issues presented by this case for determination, however, is disputed on the grounds that:

(a) The California Banking Code is inapplicable to federal savings and loan associations lawfully doing business in [64] California.

Pre-Trial Memorandum of Defendant,
Page 3, Point I and cases cited.

(b) If the California Banking Code were intended to be applicable to defendant it would be invalid to the extent that it is in conflict with paramount federal legislation regulating federal savings and loan associations.

Pre-Trial Memorandum of Defendant,
Page 5, Point III and cases cited therein.

(2) Defendant concedes Plaintiff's point that a bank is authorized to receive and pay out deposits. Defendant disputes the implication contained in plaintiff's memorandum, however, that banks hold a monopoly on the use of the word "deposits."

There is, unfortunately, a great deal of confusion in the law as to exactly what the word "deposit" connotes. Plaintiff contends that the word has no established independent legal significance. The California Code of Civil Procedure itself recognizes that, in the broadest sense of the word, at least, funds invested in federal savings and loan associations are deposits.

"Sec. 1274.3. (Bank, etc., deposits unclaimed for 20 years presumed abandoned: Property included.) All amounts of money heretofore deposited with any person which is a State bank, National banking association, savings bank, commercial bank, trust company, State building and loan association, Federal savings and loan association, savings union, credit union, or any other similar type of corporation or organization, and appearing as of January 1, 1945, on the books and records of said person as due or owing to the owners thereof and all amounts hereafter deposited with any such person to the credit of depositors who have not made a deposit on said account or withdrawn any part thereof or the interest, and which shall have remained unclaimed for more than 20 years after the date of such deposit, or withdrawal of any part of principal or interest, and where neither the depositor nor any claimant has filed any notice with such person

showing his or her present residence, and the present residence and whereabouts of the depositor or claimant are unknown shall, with the increase and proceeds thereof, be presumed to be abandoned. The foregoing definition of property presumed to be abandoned shall be construed to include all amounts held or owing by any such person to which an owner is entitled whether designated as bank deposits, time deposits, demand deposits, [65] savings deposits, certificates of deposit, investment certificates, shares, certificates of shares, credits, certificates of credits, or by any other similar designation. (Added by Stats. 1945, ch. 1080, Sec. 1.)”

Likewise, the courts have often recognized that investments in the shares of “thrift institutions” such as federal savings and loan associations are deposits in the usual sense of the word although, perhaps, not in the sense commonly employed by bankers, or in the sense in which the word is used in 12 U.S.C.A. 1464b.

Aberdeen Savings and Loan Association v. Chase, 157 Wash. 351, 289, p. 536, 290, p. 697 (1930).

Morris Plan Bank of New Haven v. Smith, 135 F. (2d) 440, 442.

Staunton Industrial Loan Corp. v. Commissioner of Internal Revenue, 120 F. (2d) 930, C.C.A. 4 (1941).

(3) Defendant, of course, denies that it has ever engaged in the banking business, except to the extent that the functions of a federal savings and loan

association are the same as those of a bank. It likewise denies that it has ever intentionally, or otherwise, led the public to believe that it was engaged in the banking business, or any other business except the savings and loan business. However, even assuming that defendant were engaged in the banking business or leading the public to so believe, defendant contends, for the reasons given herein and in its Pre-Trial Memorandum, that plaintiff would have no claim against it upon which relief could be granted.

C. The federal government or its agencies alone may regulate or restrain the activities or manner of doing business of a federal savings and loan association.

First Federal Savings and Loan Association of Wisconsin v. Finnegan, 19 F. Supp. 678; affirmed 97 F. (2d) 831, (1938). Certiorari dismissed 305 [66] U.S. 666.

The North Arlington National Bank v. Kearny Federal Savings and Loan Association, U.S.D.C. (New Jersey), Civil Action No. 451-49. Decided September 12, 1950. True copy of opinion attached hereto and by reference made a part hereof.

In the Finnegan Case the State of Wisconsin was opposing the federal savings and loan association, whereas in the North Arlington National Bank Case, a competitor brought the action. In each case, the opponents, as here, were attempting with the aid of the court on the basis of state law to regulate

or restrain the activities of a federal savings and loan association duly chartered under the authority delegated by Congress to the Home Loan Bank Board. In each case the court held, in effect, that the plaintiff did not state a claim upon which relief could be granted.

D. Conclusion: Defendant contends that the law which controls this case is based upon the sound public policy that corporations created by federal authority are controlled by federal authority. They should be permitted to function free of all interference so long as they obey the law and serve their purpose. If they act beyond their powers it is for the federal government to return them to the fold.

CRAIL AND CRAIL,

By /s/ HARRY G. McMAHON,

An Associate of the Firm. [67]

(Copy)

EXHIBIT A

United States District Court

District of New Jersey

Civil Action No. 451-49

THE NORTH ARLINGTON NATIONAL BANK,

Plaintiff,

vs.

KEARNEY FEDERAL SAVINGS AND LOAN
ASSOCIATION,

Defendant.

OPINION

HERRIGEL, LINDABURY & HERRIGEL,
ESQS.,

Attorneys for Plaintiff.

KOCH, GILLESPIE & MASINI, ESQS.,

Attorneys for Defendant.

FRED N. OLIVER, ESQ.,

Amicus Curiae on Behalf of National Association
of Mutual Savings Banks.

ALFRED E. MODARELLI, ESQ.,

Amicus Curiae on Behalf of the United States.

THEODORE D. PARSONS, ESQ.,

Amicus Curiae on Behalf of The State of New
Jersey.

Fake, Chief Judge

This suit was instituted in the State Court under the New Jersey Declaratory Judgment Act,

N.J.S.A. 2:26-66, et seq., and removed to this court upon the assertion that the complaint is founded on a claim or right arising under the Constitution and laws of the United States. That it does so arise will be noted from what follows.

The complaint discloses that the gravamen of the action lies in the allegation that the Home [68] Loan Bank Board functioning under the Home Owners Loan Act of 1933, 12 U.S.C.A., 1461, et seq., unlawfully issued to the defendant loan association an authority to open a branch office near the plaintiff's banking house. The existence and operation of this branch office, within a few doors of plaintiff's place of business, is alleged to constitute unlawful competition.

Before an action may be maintained under the New Jersey Declaratory Judgment Act, above cited, a justiciable issue must be shown to exist. *Empire Trust Co. vs. Board, etc.*, 11 Atl. 2nd, 752, at page 754.

The plaintiff here does not, nor can it claim, an exclusive right to transact business in a given territory. It is not protected by law against any and all competition. The specific thing it complains of here, as above stated, is the existing branch office of defendant loan association functioning with the express approval of the Home Loan Bank Board. The branch is, in effect, an integral part of defendant's home office. Any attack therefore made upon the validity of the existence of the branch is, in effect, also an attack upon the charter of the loan association as thus extended. This being so, no

competitor can attack it as beyond the scope of federal authority. Such action is reserved to the government in an action analogous to a quo warranto proceeding, or perhaps an attack may be made by a party having an interest in the loan association, on the ground of ultra vires. The reasoning on these points is found in *Alabama Power Co. v. Ickes*, 302 U.S. 464, with special reference to pages 479 to 485, wherein that court points out that the plaintiff [69] therein could not sustain its action. A reading of that opinion explains the approach here.

My conclusion is that the complaint herein fails to disclose a claim upon which relief can be granted by this court.

Filed September 12, 1950.

Receipt of Copy acknowledged.

[Endorsed]: Filed November 9, 1950. [70]

[Title of District Court and Cause.]

PETITION FOR LEAVE TO APPEAR AS
AMICUS CURIAE AND ORDER THEREON

To the Honorable James M. Carter, Judge of the
Above-Entitled Court:

Your petitioner, as a friend and attorney of the Court, respectfully requests that the above-entitled cause involves difficult and novel questions the determination of which will vitally affect controversies

between persons other than the parties thereto; that as attorney for such other persons, your petitioner has devoted special attention to said questions, and the Court may avail itself of all possible sources of information in the adjudication of said questions.

Your Petitioner respectfully suggests and requests that, as a friend of the Court, we be permitted to file a brief (or make an oral argument) in said cause upon the questions (or upon some specific question) therein involved.

Dated January 30, 1951. [72]

Respectfully submitted,

ERNEST A. TOLIN,
United States Attorney;

CLYDE C. DOWNING,
Assistant U. S. Attorney,
Chief of Civil Division;

/s/ REUBEN ROSENSWEIG,
Assistant U. S. Attorney, Attorneys for the United
States as Amicus Curiae.

Request to File an Amicus Curiae Brief of the
United States of America Is Hereby Granted.

Dated January 30, 1951.

/s/ JAMES M. CARTER,
Judge, U. S. District
Court. [73]

[Title of District Court and Cause.]

BRIEF OF THE UNITED STATES
SUBMITTED AS AMICUS CURIAE

Interest of the United States

Because the suit involves the attempted application of state regulation and supervision to the operations of a Federal savings and loan association, the United States is vitally interested.

The concern of the United States is to avoid interference with its instrumentalities. The question whether Federal savings and loan associations are to continue to be supervised exclusively by the Home Loan Bank Board as the agency of the Federal Government designated by Congress has an important bearing on the operation of the financial institutions of the country and on [74] the effectuation of the objectives for which Federal savings and loan associations were created as Federal instrumentalities.

This brief does not concern itself with whether the California State Statutes were intended, as a matter of statutory interpretation, to be applicable to Federal savings and loan associations, although it seems fairly clear that they were not. Neither are we here concerned with the view that the proper Federal administrative authority, the Home Loan Bank Board, might take with respect to the practices of the Federal savings and loan associations of which the Banking Commissioner complains in this action.

Our position is that the United States through the Home Loan Bank Board has plenary authority over the entire field of supervision and regulation of Federal savings and loan associations to the exclusion of the state authorities.

The Complaint

The action, which was originally filed in the state courts of California and was removed to the Federal courts, seeks to recover from a Federal savings and loan association One Hundred Dollars (\$100) a day for each alleged violation of the California State Statutes and also asks for an injunction. The State complains that the Coast Federal Savings and Loan Association is not a bank as defined in Article 652, Section 2, Cal. Gen. Laws (now repealed; see, however, Section 102, Cal. Bank C.A.), does not have a permit from California or the United States to engage in "banking business," and uses the words "bank" and "savings" and otherwise advertises so as to leave the impression that it is engaged in the banking business, all of which are said to constitute violations of Sections 12 and 12a of said Article 652 (now repealed; see, however, Sections 1762, 1763, 3390-3393, 3395, Cal. Bank, C.A., and Ch. 755, Cal. Laws (1949)) and of Section 3392 of the Banking Code of the State of California. Said Sections 12 and 12a and said Section 3392 prohibit representation of itself as a banking institution by any person who has not received a certificate to do a banking business from the State Superintendent of Banks and require advertising matter of build-

ing and loan associations and savings and loan associations, not having in their corporate name [75] words clearly indicating the nature of their business, to state "this is a building and loan association" or "this is a savings and loan association" or words to that effect. This suit does not challenge the constitutionality of Section 5 of the Home Owners' Loan Act of 1933, as amended, and no sound basis for any such challenge exists. *Fahey v. Mallonee*, 332 U.S. 245; *First Federal Savings & Loan Assn. v. Loomis*, 97 F. 2d, 831 (C.A. 7); see *Smith v. Kansas City Title & T. Co.*, 255 U.S. 180.

For the following reasons the United States as amicus curiae respectfully submits that this action cannot be maintained without derogating from the Federal government and without depriving it of control over its instrumentalities.

Argument

I.

Plenary and Exclusive Supervision of Federal Savings and Loan Associations Is Validly Vested by Congress in the Home Loan Bank Board.

Federal savings and loan associations are created by the Home Loan Bank Board. Section 5, Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464. These associations are not chartered by Congress (in which respect they differ from national banks) or pursuant to any general incorporation statute (*Keifer & Keifer v. Reconstruction Finance Corp.*, 306 U.S. 381, 392), nor are their powers

granted by any state. Federal savings and loan associations are instrumentalities of the United States. *Federal Savings & Loan Ins. Corp. v. Kearney Trust Co.*, 151 F. 2d 720 (C.A. 8); *Waterbury Sav. Bank v. Danaher*, 128 Conn. 78, 20 A. 2d 455; *State v. Minnesota Federal Savings & Loan Assn.*, 218 Minn. 229, 15 N.W. 2d 568. The statutory purposes of Federal savings and loan associations are "to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes." The Board issues charters for these associations, "giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States." The Board provides by rules and regulations for the organization, incorporation, examination, [76] operation, and regulation of Federal savings and loan associations, which name is prescribed by statute. Aside from a certain few specific prohibitions contained in the statute, such as those against the receipt of creditor deposits which are designed to preserve the mutuality of these institutions, and limitations on lending practices, the power of the Board is plenary within the general direction to give primary consideration "to the best practices of local mutual thrift and home-financing institutions in the United States." Section 5, Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464. No provision is made for sharing its authority as to these Federal instrumentalities and the embarrassments which would result from divided responsibilities are at least as great as those

in the labor field where the Supreme Court has time and time again held that within the area of its delegated responsibility the authority of the National Labor Relations Board is not only supreme but exclusive. See e.g., *Bethlehem Steel Co. v. New York Labor Rel. Bd.*, 330 U.S. 767. The conflict is not hypothetical but very real and results in division of authority and disciplinary action tending to diminish the resources of the institution available for the transaction of its business and the effectuation of the congressional purposes with the result of loss in the effectiveness of the institution as a Federal instrumentality.

II.

The Position of the Banking Commissioner in This Litigation, If Sustained, Would Seriously Impede and Possibly Prevent the Accomplishment of the Purposes of the Federal Savings and Loan System.

It is apparent from Section 5 of the Home Owners' Loan Act read as a whole, as well as from the authority granted in Section 5(a) to the Board to provide for the operation and regulation of Federal associations "under such rules and regulations as it may prescribe," and from the direction to the Board to give primary consideration to the best practices of such institutions in the United States, that a national system of uniformly operated savings institutions is contemplated. The Home Loan Bank Board as the Federal agency charged with its administration so interprets the statute. [77]

The Report of the Home Loan Bank Board for the Year Ending December 31, 1949, to the Congress of the United States states at p. 20: “* * * The underlying purpose of this legislation was to provide for adequate thrift and home financing facilities by creating local institutions throughout the country that would operate on a uniform plan incorporating the best practices and operating principles of savings institutions specializing in the financing of homes.” The Board is not required to trim the operations of Federal savings and loan associations to conform with the variegated and myriad requirements imposed by what local law regards as the closest analogue. In New England this might be mutual savings banks and cooperative banks; in California this might be mutual building and loan associations. It is the government’s view that these Federal savings and loan associations are *sui generis*, are governed by national law and are to be operated according to nation-wide standards and principles set out in the Act. To illustrate, the two best known types of local mutual thrift home-financing institutions operating in the United States at the time of the enactment of the Home Owners’ Loan Act, and accordingly the point of departure for Federal savings and loan associations, were building and loan associations and mutual savings banks. (1) The institutions that we have generally categorized as building and loan associations operate under different names in different parts of the country, among which names are cooperative banks, homestead associations, savings and loan associations,

and various combinations. Cf. 5A Ann. Laws Mass. Ch. 170; 6 La. Rev. Stat. 724. These have variant requirements and controls, in many cases derived from preconceptions prevalent in a particular area at the time of the enactment of state laws prior to the Federal statute of 1933. It cannot be doubted that at the time of the enactment of the Home Owners' Loan Act of 1933, the operating structures of these institutions varied as widely as their names. (2) The other type of mutual savings institution, the mutual savings bank, conforms to the original pattern of a savings institution operated by a disinterested self-perpetuating board of trustees for the benefit of persons assumed to be incapable of participating in its management but who receive the financial [78] benefits of its mutuality. *Huntington v. National Savings Bank*, 96 U.S. 388. From the very first the Home Loan Bank Board followed the practice of issuing uniform Federal savings and loan association charters throughout the United States which charters accordingly might conform to a greater or less extent to those of existing savings institutions of any type in any one state in which the Federals were operating. The uniform charter and bylaws for the entire country are prescribed by regulation in accordance with the statutory direction above discussed. 24 Code of Federal Regulations 144.1, 144.5.

The policy of uniform charters and bylaws has consistently been extended to uniform standards of supervision that are applied regardless of the state in which the home office of the particular institu-

tion happens to be located. On one of the most controversial questions involved in the supervision of Federal savings and loan associations, the Board observed thus:

“* * * [The Board] does not, however, accept the thesis that its judgments or authority are bound by State laws or by the policies of State supervisory authorities with respect to the creation and approval of branch organizations. In its interpretation of Federal statutes, the Board has formed the opinion that to the extent that Congress empowered it to charter Federal associations, it likewise, under the law and for the same reasons and with the same general limitations, gave the Board authority to sanction and approve the creation of branches.”

Report of the Home Loan Bank Board for the Year Ending December 31, 1948, p. 38.

From the national viewpoint there are obvious advantages to a uniform system of Federal savings and loan associations. An investor in Iowa relatively unschooled in banking law and practices knows substantially what interest he is acquiring when he places funds in a Federal savings and loan association in any other state. From the viewpoint of facilitating [79] supervision and regulation, and of influencing these institutions to perform their proper statutory functions and of avoiding conflict and divergent accounting practices, uniformity is an obvious aid.¹

¹Of course, regardless of its advantages, uniformity is prescribed by the Federal statutes.

The superimposition of state regulation on Federal savings and loan associations, devised, intended, and adapted for a particular form of state institution whether the particular model selected by the state for Federals operating in its territory happens to be one of the many building and loan types or the mutual savings bank type, is obviously incompatible with maintenance of a uniform Federal system and by its very nature a serious interference with the ability of the Board to accomplish its supervisory duties and of the instrumentality itself to perform its assigned functions.

For example, California undertakes in this litigation to prevent Federal savings and loan associations from giving the appearance of "banking institutions." In New York, however, all savings and loan associations are specifically stated to be "banking institutions." Vol. 4, Part 1, McKinney's Laws of New York, Section 2(11). In Massachusetts, such institutions are generally named "banks." 5A Ann. Laws Mass. Ch. 170. Federal savings and loan associations in New York, Massachusetts, and California, however, are the same, regardless of whether the state calls similar institutions "banking institutions." If Federal savings and loan associations are to be prohibited from advertising themselves to be "banking institutions," the prohibition must be by the Home Loan Bank Board, and not by any one state.

It is also true that Federal savings and loan associations through the country advertise that they receive "savings." This advertising is ap-

proved by the Home Loan Bank Board. California, by this litigation, would prohibit such advertising in that State. The Home Loan Bank Board is thus faced with the alternative, if it directs or permits Federal savings and loan associations in that State to comply with this prohibition, either to sacrifice national uniformity, or to forbid associations in the entire United States from advertising that they receive "savings." But the latter [80] course might so hamper their activities that the purposes of their creation would be frustrated. By way of contrast with the position of the State of California in this litigation, Vol. 4, Part 1, McKinney's Laws of New York, Section 258-1, provides:

"No bank, trust company, national bank, individual, partnership, unincorporated association or corporation other than a savings bank or a savings and loan association shall make use of the word 'saving' or 'savings' or their equivalent in its banking or financial business, or use any advertisement containing the word 'saving' or 'savings,' or their equivalent in relation to its banking or financial business, nor shall any individual or corporation other than a savings bank in any way solicit or receive deposits as a savings bank; but nothing herein shall be construed to prohibit the use of the word 'savings' in the name of the Savings and Loan Bank of the State of New York or in the name of a trust company all of the stock of which is owned by not less than twenty savings banks. Any bank, trust company, national

bank, individual, partnership, unincorporated association or corporation violating this provision shall forfeit to the people of the state for every offense the sum of one hundred dollars for every day such offense shall be continued.’’²

It is fair to infer that, if Federal savings and loan associations had in 1934 been prevented from advertising that they receive “savings,” the United States Treasury would still be the principal owners of these associations. Unless they so advertise, they cannot successfully solicit their necessary [81] capital.³ As in other safety legislation, the Federal

²The application of this statute to national banks is contested in pending litigation in the New York state courts. *State of New York v. Franklin National Bank*, N.Y. Sup. Ct., *American Banker*, June 12, 1950, p. 1, col. 3; *American Banker*, June 26, 1950, p. 1, col. 2.

³In upholding the power of the Federal Reserve Board to authorize national banks to act as trustee, the Supreme Court in *First Nat. Bank v. Fellows ex rel. Union Trust Co.*, 244 U.S. 416, 420, said in part:

“In *Osborn v. Bank of United States*, 9 Wheat. 738 * * * it was expressly held that the authority of Congress was to be ascertained by considering the bank as an entity possessing the rights and powers conferred upon it, and that the lawful power to create the bank and give it the attributes which were deemed essential could not be rendered unavailing by detaching particular powers and considering them isolatedly, and thus destroy the efficacy of the bank as a national instrument. The ruling in effect was that although a particular

government has occupied the field and has precluded the imposition of additional requirements however well motivated. *Napier v. Atlantic Coast Line R. Co.*, 272 U.S. 605.

Different regulations and different restrictions are applied to local mutual thrift and home-financing institutions in the several states. Some of these regulations may well be considered by other experts as unsafe. Requirements of one state may be the opposite of those of another or of those which the Federal Board deems desirable, subjecting Federal savings and loan associations to a cross-fire of conflicting requirements, [82] a matter of grave concern to the Federal Board whose instructions may be canceled or rendered nugatory in practical effect. Some states tend to encourage, others to discourage, the mutual or cooperative type of financial institutions, which policy may be reflected in statutes and regulations affecting all operations including advertising, in day to day rulings of state supervisors, and even in the state judiciary. Compliance by Federal savings and loan associations in any state with the requirements of the state authorities would make national supervision a practical impossibility. Even the imposi-

character of business might not be, when isolatedly considered, within the implied power of Congress, if such business was appropriate or relevant to the banking business, the implied power was to be tested by the right to create the bank and the authority to attach to it that which was relevant, in the judgment of Congress, to make the business of the bank successful. * * *” (Emphasis supplied.)

tion of penalties by the state for violation of Federal regulations would seriously hamper the Federal system. First, only one authority can determine whether there has been a violation. Second, even if there is an admitted violation, the imposition of penalties is a matter of policy and judgment, and excess punishment for petty infringements of regulations, of a type bound to occur in any large institution, may well make normal operation an impossibility.

III.

The Interposition by the State Banking Commissioner in the Operations of Federal Savings and Loan Associations as Such, Including the Application of State Statutes and State Regulation, Is Unconstitutional.

We have seen that Federal savings and loan associations are validly created instrumentalities of the United States, and the Home Loan Bank Board has been granted a plenary and exclusive authority to provide in nationally uniform rules and regulations for their organization, incorporation, examination, operation, and regulation. To summarize, the position of the State Banking Commissioner in this litigation, if maintained, would (1) prevent the Home Loan Bank Board from carrying out its governmental function of providing for the uniform operation and regulation of Federal savings and loan associations throughout the United States, (2) prevent the Coast Federal Savings and Loan Association and other Federal savings and loan

associations in California from complying with the uniform regulations and supervisory directions of Federal authorities, and (3) otherwise [83] impede the operations of Federal savings and loan associations in California by the imposition of dual supervision, by superimposing and substituting the judgment of state authorities including the State Banking Commissioner, the state courts, and the state legislature on or for the judgment of the Federal government as to the proper operation of Federal savings and loan associations, and by prohibiting the use of means, including advertising methods, essential to the raising of capital necessary for the operations of these Federal instrumentalities. If these obstacles could be imposed by the state to the execution of Federal statutes and the operations of Federal instrumentalities, every state would have an independent veto power over each operation of the Federal government within its territory. But the supremacy clause of the Constitution removes all state obstacles to the performance by the Federal government of any of its functions and so modified "every power vested in subordinate governments as to exempt its own operations from their own influence." *McCulloch v. The State of Maryland, et al.*, 4 Wheat. 316, 427. This doctrine of Federal immunity, accepted in many decisions of the Supreme Court, is coextensive with the scope of Federal power, for every authorized activity of the United States is an exercise of its governmental power. *Graves v. New York*, 306 U.S. 466, 477; *Pittman v. Home Owners'*

Loan Corp., 308 U.S. 21, 32; Federal Land Bank v. Bismarck Lumber Co., 314 U.S. 95, 102.

Because the United States "may perform its functions without conforming to the police regulations of a state," it may construct a dam and reservoir in a state without securing approval of its plans and specifications by the state engineer (*Arizona v. California*, 283 U.S. 423, 451); and it may operate soldiers' homes without complying with state inspection or police regulations (*Ohio v. Thomas*, 173 U. S. 276). So, too, the driver of a mail truck for the Post Office Department cannot be required to comply with state driving license requirements (*Johnson v. Maryland*, 254 U.S. 51; cf. *Baltimore and A. R. Co. v. Lichtenberg*, 176 Md. 383, 4A 2d. 734, appeal dismissed, 308 U.S. 525), nor may Federal agents in a national forest and game preserve be subject to the hunting restrictions of the state in which [84] the preserve is located. *Hunt v. United States*, 278 U.S. 96.

In general "where the United States exercises its power of legislation so as to conflict with a regulation of the state, either specifically or by implication, the legislation becomes inoperative and the federal legislation exclusive in its application." *Cloverleaf Butter Co. v. Patterson*, 315 U.S. 148, 156. "The elementary principle that, under the Constitution, the authority of the government of the United States is paramount when exerted as to subjects concerning which it has the power to control, is indisputable." *Northern P. R. Co. v. North Dakota*

ex rel., Langer, 250 U. S. 135, 150. States cannot by "taxation or otherwise, * * * retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government." *McCulloch v. The State of Maryland, et al.*, 4 Wheat. 316, 436. When Congress creates instrumentalities to execute its laws, "Congress has the power to protect the instrumentalities which it has constitutionally created." *Federal Land Bank v. Bismarck Lumber Co.*, 314 U. S. 95, 102. By way of example, the Supreme Court has held that not even the prerogative of a state to control its own courts can be utilized to prevent the appointment of a national bank as executor under a will when competing trust companies are authorized to act in that capacity. *Missouri ex rel., Burnes Nat. Bank v. Duncan*, 265 U. S. 17. In *First Nat. Bank v. California*, 262 U. S. 366, the Supreme Court in holding the escheat of deposits of a solvent national bank invalid, said at 368-369:

"These banks are instrumentalities of the Federal government. Their contracts and dealings are subject to the operation of general and undiscriminating state laws which do not conflict with the letter or the general object and purposes of congressional legislation. But any attempt by a state to define their duties or control the conduct of their affairs is void whenever it conflicts with the laws of the United States or frustrates the purposes of the national legisla-

tion [85] or impairs the efficiency of the bank to discharge the duties for which it was created. *Davis v. Elmira Sav. Bank*, 161 U. S. 275, 283, 288, 290, 40 L. Ed. 700-703, 16 Sup. Ct. Rep. 502."

The congressional policy creating a uniform system of Federal savings and loan associations "cannot be overridden by the policy of the state." *Easton v. Iowa*, 188 U. S. 220, 232. While the field of national bank operations has not been so completely occupied by Federal legislation as that of Federal savings and loan association operations, the Supreme Court nevertheless said with respect to the National Bank Act (*ibid.* at 229) "That legislation has in view the erection of a system extending throughout the country, and independent, so far as powers conferred are concerned, of state legislation which, if permitted to be applicable, might impose limitations and restrictions as various and as numerous as the states."

The principle that "the States can exercise no control over * * * [Federal instrumentalities], nor in anywise affect their operation, except in so far as Congress may see proper to permit" (*Farmers' & M. Nat. Bank v. Dearing*, 91 U. S. 29, 34) is not limited in its application to any one department of the state government. "The State Court may administer not only the laws of the State, but equally federal law, in such a manner as to paralyze the operations of the government. * * * We do not think such an element of weakness is to

be found in the Constitution. * * *” *Tennessee v. Davis* 100 U. S. 257, 263. To this same effect is *Van Reed v. People’s Nat. Bank*, 198 U. S. 554, holding that there could be no state court attachment of national banks, wherein the court said, at page 557:

“* * * National banks are quasi-public institutions, and for the purpose for which they are instituted are national in their character, and within constitutional limits, are subject to the control of Congress, and are not to be interfered with by state legislative or judicial action, except so far as the lawmaking power of the government may permit. * * *” [86]

Compare *Missouri ex rel., Burnes Nat. Bank v. Duncan*, *supra*.⁴

⁴It would seem that not only was the State Banking Commissioner without power to apply state regulatory statutes and his own decisions as to proper operations to the defendant Federal savings and loan association, but the state court was without jurisdiction to entertain the action. Since the state court had no jurisdiction, the Federal court acquired none on removal. *Minnesota v. United States*, 305 U. S. 382; *Lambert Run Coal Co. v. Baltimore & Ohio R. Co.*, 258 U. S. 377; *Freeman v. Bee Machine Co.*, 319 U. S. 448. Unlike *First Nat. Bank v. Fellows ex rel., Union Trust Co.*, 244 U. S. 416, where quo warranto in a state court was held to be an appropriate procedure because the state statute allows national banks to act as trustee even in contravention of state law 12 U.S.C. 1464, makes no reference to state law.

Conclusion

For the foregoing reasons, the attempted regulation of Federal savings and loan institutions, if the California law may be construed so to provide, would be unconstitutional interference with the exclusive and plenary power of regulation conferred on the Home Loan Bank Board. The complaint fails to state a cause of action or claim upon which relief may [87] be granted, the state court had no jurisdiction, and this court acquired none on removal.

Respectfully submitted,

/s/ NEWELL A. CLAPP,

Acting Assistant Attorney
General.

/s/ ERNEST A. TOLIN,

United States Attorney, Attorneys for the United
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Home Loan Bank Board.

[Endorsed]: Filed January 30, 1951.

[Title of District Court and Cause.]

STIPULATION OF FACTS FOR THE
PURPOSES OF TRIAL

It Is Hereby Stipulated by and between the parties hereto, through their respective counsel, Edmund G. Brown, Attorney General of the State of California, and Walter L. Bowers, Assistant Attorney General, and Bayard Rhone, Deputy Attorney General, for the plaintiff, and Messrs. Crail and Crail by Harry G. McMahon, Esq., and Frank P. Doherty, Esq., attorneys for the defendant, that the following stipulation of facts are agreed as facts to be admitted without objection as evidence for the purpose of trial.

Now, Therefore, It Is Stipulated That:

I.

That plaintiff Maurice C. Sparling is, and was at all times mentioned herein, the duly appointed, qualified, and acting Superintendent of Banks of the State of California. [89]

II.

Frank C. Mortimer is and was at all times mentioned herein duly appointed, qualified and acting Building and Loan Commissioner of the State of California and having jurisdiction of all state building and loan associations chartered and authorized by said State.

III.

The defendant, Coast Federal Savings and Loan Association, is and was at all times mentioned

herein a corporation organized under and pursuant to the provisions of the Acts of Congress of the United States of America, and the provisions of said Acts as set forth in 12 U.S. Code Annotated 1464. The said defendant at all times had its principal place of business in the County of Los Angeles, State of California, and at all times was subject to the jurisdiction, regulation and control of the Federal Home Loan Bank Board, as authorized by said Acts of Congress.

IV.

That the defendant is and was at all times mentioned herein a savings and loan association as defined and empowered by the aforesaid Acts of Congress; that the defendant does not have and has not had at any time mentioned herein any certificate from the Superintendent of Banks of the State of California and does not have and has not had at any time mentioned herein any authority, right or permit from, by or under the State of California or the United States of America to engage in or transact a banking business as defined by the laws of the State of California and of the United States of America, as distinguished from the transaction of business as a savings and loan association under said foregoing laws.

V.

That on or about November 1, 1948, and on each and every day thereafter up to on or about March 1, 1949, the defendant made use of office signs at

one of its places of business where it [90] transacted business in the County of Los Angeles, State of California, having words, as a part of said signs and used in such a juxtaposition as appear in Exhibit A, copies of which are attached to the complaint. That the overemphasis in said signs of the word "bank" was called to the attention of the defendant by the plaintiff and by a representative of the Federal Home Loan Bank Board, and the said signs as set forth in Exhibit A of said complaint were removed and the emphasis placed upon the word "bank" was discontinued, and the signs used by said defendant thereafter recited that defendant was a "Member of Federal Home Loan Bank" without emphasizing the word "bank."

VI.

That in the operation of defendant's business it publishes a house organ, namely, a publication that is distributed among the employees, customers and prospective customers, of the defendant, said publication being named and known as "Coast Federal's Challenger"; that said publication is made quarterly and was published at all times alleged in plaintiffs' complaint and is still being published, and had an average circulation of more than 54,000 copies. That the October, 1949, issue of said "Coast Federal's Challenger" is Exhibit A to defendant's answer on file herein; that on page 1 of said October, 1949, issue there appeared the following:

"Place Your Savings at Coast Federal * * *
For * * * Safety, with federal insurance up to

\$5,000 per account; For * * * Higher Return on Your Savings; 3% per annum is the current rate; For * * * Convenience, and friendly service; For * * * Availability—you can get your money when you want it. Accounts Opened by the 10th of the Month Earn from the 1st,” [91]

that on page three of said October, 1949, issue there appeared the following:

“Your Savings Account Opened by the 10th of the Month, Earns Interest from the 1st! Whee!”

and that on page four of said October, 1949, issue there appeared the following:

“Why I Hate Your Singing Commercial”
Winners * * * “As usual, our Committee-On-Deciding-on-Contest-Winners couldn’t make up its mind about which of the letters on the darned singing commercial was best—so instead of awarding one \$25 prize, we’re awarding six \$25 prizes! And only grim determination on the part of budget-balancing Controller Bob Souter kept them from sending \$25 to every one of the hundreds of letter-writers.

“Here are the winners: (wish we had space to print the whole of their very interesting letters).

“Mrs. Robert G. Hoyt, who complained because her baby’s first words were ‘Cos Fed saves mo’—instead of ‘Mama.’

“Mrs. Mable E. Smith, who made the con-

structive suggestion of a dignified slogan such as: 'Our Business Is Banking. Our Banking Is Business. We solicit your banking business.'

"Bob Downer of Laguna Beach, who made some valuable suggestions, and commented that 'there's no mention at all of the most important thing about Coast Federal—the friendly people. Most Banks and loan associations seem to regard you as a criminal if you have any money to deposit and a bum if you make a withdrawal or loan. You feel like you owe every clerk and the manager an apology every time you walk [92] in the door of those places. Two years ago I left Los Angeles, and I withdrew my savings from Coast Federal to buy a car and trailer, but I left a dollar there to keep my account open. The high Cost of Living hits me so hard that sometimes I wish I had that buck to spend, but it stays at Coast Federal just so I can say I'm a depositor. That's how much Coast Federal's friendly spirit means to me.'

"Carol M. Holt, for her poetic entry, which really rhymed and scanned, and also made good sense.

"Mrs. C. W. Cook—and we're writing to ask her if we may print her letter in its entirety—it's that worthwhile.

"Alice B. Pearce—who says she hates the commercial because it's 'such a catchy little tune' that it made her transfer her savings 'from one of those places that give you so

little interest you just know they are bored to carry the account,' to Coast Federal. She says, 'Now when I get a desire for a new hat or even a much needed suit, I can't get it. It was so easy before to get it; I wasn't getting any interest to speak of anyway. But now, oh, that interest! So I'll just brush up my old hat and suit and cuss the singing commercial, but that money stays right in Coast Federal.'

"Bob Souter points out that we haven't really quoted any of the uncomplimentary (sometimes vitriolic) things which were said about the singing commercial in these winning letters. Well, there were plenty of them—and we appreciate the helpful spirit in which they were written—and we've overwhelmed our singing-commercial-happy advertising man with your complaints; and thanks!" [93]

and that also on page four of said October, 1949, issue there appeared the following:

"Open Your Coast Federal Savings Account
Now! Coast Federal Savings and Loan Association"

The slogan of Mrs. Mable E. Smith, namely, "Our Business Is Banking, Our Banking Is Business. We solicit your banking business," was not otherwise published in any of the literature, publicity or advertisements of said defendant.

VII.

That on November 1, 1948, and on each and every

business day thereafter up to and including the commencement of this action, the Defendant solicited savings accounts from members of the public. When one of said members of the public opened a savings account with Defendant, that person received what is known as a savings account pass book. Entries in the pass book show, among other things, the balance of the savings account.

VIII.

That in the issue of the Challenger dated October 4, 1948, there appeared in the lefthand column of page three an article concerning the 9th and Hill location. Said page is reproduced as Exhibit A to this Stipulation.

IX.

That on or about January 4, 1949, in the Los Angeles Herald Express, there appeared an advertisement containing the words "How to open your savings account!" A photostat of the entirety of said advertisement is attached hereto as Exhibit B.

X.

That on or about November 1, 1948, and each and every day thereafter up to this date, the Defendant has from time to time advertised and referred to itself as "Coast Federal Savings" without using the balance of its corporate name, and without appending to such advertising matter any words to the effect that it is a [94] savings and loan association, and unless restrained will continue to do so.

XI.

That on or about December 27, 1948, in the Los Angeles Times, there appeared an advertisement inviting the public to the opening of Coast Federal Savings. A photostat of the entirety of said advertisement is attached hereto as Exhibit C.

Dated February 12, 1951. -

EDMUND G. BROWN,
Attorney General.

WALTER L. BOWERS,
Assistant Attorney General.

BAYARD RHONE,
Deputy Attorney General.

/s/ BAYARD RHONE,
Attorneys for Plaintiffs.

CRAIL AND CRAIL, and HARRY G. McMAHON; and FRANK P. DOHERTY,

/s/ HARRY G. McMAHON,
Attorneys for Defendant. [95]

EXHIBIT A

October 4, 1948

COAST FEDERAL'S CHALLENGE

Page Three

COAST FEDERAL OPENS OFFICES AT NINTH AND HILL



Ninth and Hill Building

PRIZE CONTEST!

We want a jingle which will associate "Coast Federal" or "Coast Federal Savings" and "Ninth and Hill" in folks' minds; something like:

"Coast Federal
Ninth Street at Hill,"

only better.

So, we're gonna have a contest!

RULES: 1. Contest is open to everybody — employees, customers, Baptists, mothers-in-law, nudists, anybody.

2. Prize for any jingle used in any of our advertising — \$50.00.

3. If two or more people submit the same jingle — the first one received by us will get the prize.

4. No weight given to neatness of entry — write it on any old postcard, back of an envelope, income tax blank, old shirt-front — just so we can read it.

A COAST FEDERAL HOME LOAN

is your insurance for peace of mind. Let us worry about taxes, insurance, crows and stuff — all you have to do is find the house, (and make the monthly payments). You'll like our friendly, courteous, helpful service.

WANT ADS

(Note to anybody who came in late: This is a column run just for the convenience of Coast Fed's wonderful customers. It's for free. Please forgive us if you send in an ad and it isn't printed; we get more ads than we have room for unless we just convert the *Challenger* into a Want Ad paper, which would please some few of you maybe, but we think most folks like to read about what Coast Federal is doing, and we know from your letters that many of you read the *Woke* column first of all, and then us employees like to see our news in print, and then we have to get in a few plugs for Coast Federal too. Also, please pardon the occasional mistakes in the Want Ad-house; we try terribly hard to get everything right — we have about ten different people proof-read the stuff — but once in a while our greenhorns slip in " \$1" when it should be "\$100," or changes one numeral in a phone number and then, oh, my! what happens to us shouldn't happen to a dog!

Please keep your ads short and please don't send in an ad without a phone number. Also, we have a policy not to print ads about real estate for sale, because there are just too darned many of them.

Now, after all those don'ts, we want to say: Thanks for being so nice about things. Your friendly, courtesy keeps us trying on the Want Ads column."

WE ETO

For SALE: Guitar, Martin 00028, fast action (finger board), Rosewood box, plywood case, AN 2-6189

For SALE: Ping Pong Table, 5-ply, like new, also children's books, HI 6459

For SALE: An improved adjustable dress form, \$10 — 676 Shatto Place, Apt. 310, evenings or Sunday afternoon.

For SALE: Leaving for Florida, will sacrifice complete lady's wardrobe of elegant clothes, size 16, many pairs of famous make shoes, size 7A and B, also some house furnishings, Grey Persian cape, latest style, never worn, will sacrifice, EX 3007.

For SALE: New tablecloth, Pineapple pattern, extra color, hand-embroidered, 70x96 inches, AN 1-2910.

If you're interested in living next door to Frank Sinatra, call up Guy Anderson at Palm Springs 2064 or 6553, or Irene Anderson evenings at ME 8386. They've got a lot for sale next door to Frankie's Palm Springs home, but we can't print their ad on account of our policy about real estate ads.)

For SALE: Linen tablecloths, EX 3508.

A clean, dependable elderly man would help with household or miscellaneous duties in exchange for a room. Nathan Rubin, 2829 Boulder St., L.A. 33.

For SALE: 40-acre farm out here in Arkansas, 5 room house, good water on the porch which is part of the house, 3 good wells on the place, 2 barns, 1 chicken house, 12 apple trees, 12 peach trees, 20 acres in corn that is fine, 20 acres in alfalfa, late potatoes and garden, the good team of mules, wagon harness, 1 good mow machine. All implements (couldn't figure out that word, Mrs. Smith!) all household goods, 10 fine cows, 200 young fries and old hens, and a big hay meadow, 3 acres of good non-merchantable timber such as Oak, Gum, Walnut. All this for \$9000. It is a fine family home, close to school, churches, 6 miles from Batesville, Arkansas, which is a good live town. \$5000 cash will handle. Olive F. Smith, R. 2, Batesville, Arkansas.

I thanks for writing to us, Mrs. Smith. It's interesting to hear from somebody way out there, and we'll let you sell your farm to some Coast Federal family who feel like getting back to the simple life. In fact, we've had trouble wearing shoes ourselves, ever since we read your letter. Sure sounds like a nice place.)

For SALE: Black Gas Range, ivory, green trim, left hand oven, Thermostat. Good condition. Price \$15.00, WY 0748.

For SALE: Sonotone Hearing Aid, beautiful sol. mfg. dining room set, 18th cent, NO 2-1432.

For SALE: Singer Sewing Machine \$30; Mahogany dresser \$15; handbags \$12 \$4; oil bed springs \$7; Carl's ice skates \$1; Schick electric razor new, \$10; Jotham riding shoes size 8, \$3; Riding pants size 18, \$5; Garrison cap size 7 1/2, WA 9028.

For SALE: Wooden white enameled single bed, springs, mattress, all \$15, good condition. Hot automatic water heater suitable for laundry room or mountain cabin, \$17, MI 4211, Est 2563 days; or GI 9579 evenings. Anne Keeler.

EXHIBIT B



HOW TO OPEN YOUR SAVINGS ACCOUNT!

- 1 Bring your savings to Coast Federal
- 2 Ask for Rae Smith, who will help you get your Federally Insured Account
- 3 THIS IS THE PASSBOOK which entitles you to add to your account or take your money out

307 West 8th Street • 2nd Floor

Ninth & Hill Streets • Ground Floor

TUcker 1351 • Open Mondays until 9 p. m.

L A R G E S T I N T H E W E S T

COAST FEDERAL SAVINGS

JOE CRAIL, PRESIDENT

Handwritten: 1/24/34 - 1/24/34

You are invited to
the opening of
COAST FEDERAL SAVINGS
Ninth and Hill Office
On Monday, January Third
from 2 to 3



Build your savings
account with a
**COAST FEDERAL
SAVINGS BANK**

With your savings account
you will receive a Coast
Federal Savings Bank...
an exact copy of Coast
Federal's Ninth & Hill office

2 CONVENIENT LOCATIONS:

222 West 24th Street - 2nd Floor

Ninth & Hill Streets - Ground Floor

LARGEST IN THE WEST

98

COAST FEDERAL SAVINGS

[Title of District Court and Cause.]

OPINION

Appearances:

For Plaintiffs:

EDMUND G. BROWN,
Attorney General,

WALTER S. BOWERS,
Asst. Attorney General,

BAYARD RHONE,
Deputy Attorney General.

For Defendant:

CRAIL and CRAIL,
HARRY C. McMAHON, of Counsel and
FRANK P. DOHERTY.

For United States, as amicus curiae.

NEWELL A. CLAPP,
Acting Asst. Attorney General,

ERNEST A. TOLIN,
United States Attorney,

CLYDE C. DOWNING,
Asst. United States Attorney,

REUBEN ROSENSWEIG,
Asst. United States Attorney,

EDWARD H. HICKEY, and

HUBERT H. MARGOLIS,

Attorneys, Department of Justice, and

KENNETH G. HEISLER,

General Counsel, and

WILLIAM F. McKENNA,

Asst. General Counsel,

Home Loan Bank Board, of Counsel.

For the California Savings & Loan League,
as amicus curiae.

SHEPPARD, MULLIN, RICHTER &

BALTHIS,

FRANK S. BALTHIS, and

JAMES C. SHEPPARD, of Counsel.

James M. Carter, District Judge.

This is an action for injunction and recovery of statutory penalties, in which the plaintiffs contend that defendant, a Federal savings and loan association, solicited and received deposits, representing itself to be a banking institution, and transacted its business in the manner of a savings bank, in violation of California state statutes and without authority.¹

The action was commenced in the State court and removed to the District Court. Due to the importance of the questions involved, leave was granted to the United States and to the California Savings & Loan League to appear as amici curiae.

The Facts

Defendant was chartered by the Home Loan Bank Board (hereafter referred to as the Board) under Sec 5(a) of the Home Owners' Loan Act of 1933, as amended, Sec. 1464(a), Title 12, U.S.C.A., its principal place of business being in Los Angeles. It has not received a certificate from the State Superintendent of Banks (hereafter referred to as the Superintendent) to do a banking business, nor has it been authorized by the United States to transact business as a National Bank.

Defendant issued but two types of accounts: an "investment share account," in multiples of \$100, and a "savings share account," in any amount. Under normal conditions,^{1a} holders of savings share accounts may add to or withdraw funds from the account, at will. Every person opening an [100] account is issued a membership certificate and becomes a member of defendant, entitled to one vote at all membership meetings for every \$100 or fraction, on deposit, with a maximum of 50 votes. Each holder of a savings share account is given a pass book. Subject to limitations prescribed by the Home Loan Bank Board, defendant's directors fix the dividend rate, semi-annually, to apply for the next succeeding half year; otherwise the association does not agree to pay a fixed rate of earnings upon its accounts.

The charter of defendant, implemented by rules and regulations of the Board, expressly authorizes defendant to make loans on homes, within pre-

scribed limits, if secured by a first lien; each such borrower becomes a member of defendant, with the right to cast one vote at membership meetings.

No evidence was offered which would support, a finding that defendant was actually transacting its business other than strictly within the limited perimeter of its expressly authorized field. The gravamen of the complaint is that through signs and other means of advertising, defendant has transacted business in the manner of a bank and has held itself out as a bank or savings bank, and has led the public to believe that it was such a bank, without authority and in violation of state statutes. Plaintiffs further allege that defendant, unless restrained, will continue such advertising, and seek injunctive relief, as well as recovery of the \$100-a-day statutory penalty.

In its various types of advertising, defendant uses a part of its corporate name, viz: "Coast Federal Savings." It uses such phrases as "Your savings account opened by the 10th earns interest from the 1st," "Open your Coast Federal Savings account, now," "Place your savings at Coast Federal," and "You can get your money when you want it." [101]

Through emphasis upon certain words used in adjoining window signs, the very myopic would read, from a distance, "Coast Federal Savings Bank."² Supervisory personnel of the Board saw such signs frequently. They were removed at the request of the Board about seven months before this action was commenced, but only after the Board

received complaints, including those of the Superintendent. Thereafter, defendant's signs recited that it was a "Member of Federal Home Loan Bank," without emphasizing the word "bank."

In 1938, and prior to the time when, as alleged in the complaint, defendant commenced to use the advertising methods complained of, the Federal Savings and Loan Insurance Corporation (a federal instrumentality which insures deposits at Federal Savings and Loan Associations) published a handbook^{2a} dealing with approved and recommended advertising by insured institutions, including federal savings and loan associations. The handbook approved the use of such phrases as "Accounts Federally Insured," "Insured savings accounts," "Save where savings are insured" and "Availability of funds." It stated that earnings distributed should be referred to as "dividends" and not as "interest." One of the advertisements used by the defendant stated "earns interest from the 1st." This statement was not within the letter or spirit of one of the regulations.³

At no time did plaintiffs request or petition the Board for a hearing or other administrative action concerning the defendant, with the exception of the informal complaints, above mentioned, as to the signs.

The answer asserts that (1) the complaint fails to state a justiciable claim; (2) the state statutes relied upon by plaintiffs are inapplicable; (3) defendant is an [102] instrumentality and agency of the United States; (4) its acts were done by virtue

of and under the authority of the United States; (5) plaintiffs have not resorted to or exhausted administrative remedies provided by the rules and regulations of the Board; and (6) the public has not been mislead. Additionally, defendant and amici curiae urge that (7) primary jurisdiction lies with the Home Loan Bank Board, (8) the state courts did not have jurisdiction over the subject matter of this action, and, finally, (9) that this court is likewise without such jurisdiction.

The Questions for Determination

Four questions are presented: (1) Whether primary jurisdiction over the subject matter lies with the Home Loan Bank Board, or in the state courts; (2) the effect of the failure of plaintiffs to exhaust administrative remedies; (3) if the state court was without jurisdiction over the subject matter, whether this court is also without jurisdiction thereof; finally (4), whether the state regulatory statutes which plaintiffs seek to invoke, are valid.

The Law

I.

Defendant is a Federal savings and loan association, organized and chartered by the Home Loan Bank Board. Sec. 5, Home Owners' Loan Act of 1933, as amended; Sec. 1464, Title 12, U.S.C.A. It is conceded that such an association is an instrumentality and agency of the United States.⁴

Federal savings and loan associations are created

“to provide local mutual thrift associations in which people may invest their funds and in order to provide for the financing of homes.” Sec. 1464(a), *Ibid.* The Board issues charters for these associations, “giving primary consideration to the [103] best practices of local mutual and home-financing institutions in the United States.” Sec. 1464(a), *Ibid.* *North Arlington Nat. Bank v. Kearney Fed. Sav. & Loan Assn.*, 3 Cir., 187 F.(2d) 564 (1951).

Congress expressly delegated the duty and authority to the Board to make policy, including the power to make rules and regulations for the organization, incorporation, examination, operation, supervision and regulation of such associations, which delegation of authority is constitutional. *Fahey v. Mallonee*, 332 U.S. 245, 67 S. Ct. 1551 (1947). No provision is made for sharing the Board’s delegated authority with state regulatory or supervisory agencies. *North Arlington Nat. Bank v. Kearney Fed. Sav. & Loan Assn.*, *supra*. *First Fed. Sav. & Loan Assn. v. Loomis*, *supra*, note 4.

The Board has adopted comprehensive rules and regulations concerning the powers and operations of every Federal savings and loan association from its cradle to its corporate grave. Title 24, Code of Federal Regulations, 1949 Ed. Ch. I, sub-chapter C, published under authority of Secs. 311(d) and 311(a), Title 44, U.S.C.A. and Ex. O. No. 9931, Feb. 4, 1948, 13 F.R. 519. These rules and regulations have the force and effect of law, and are noticed judicially. Secs. 301-314, Title 44, U.S.C.A.; *Community Fed. Sav. & Loan Assn. v. Fields*, 1942, 128

F. (2d) 705; *H.O.L.C. v. Gordon*, 36 Cal. App. 2d. 189, 97 P.2d 845 (1939); *Standard Oil Co v. U.S.* 9 Cir. 107 F. (2d) 402 (1939).

Sec. 142.2 of the Regulations, 14 F.R. 5664, provides, in part: "The Board may order a hearing in connection with the consideration of any matter arising under any provision of the rules and regulations . . . whether or not any request therefor has been made by any person." The Board, in adopting that section, expressly found that its adoption [104] would tend "to expedite the public business and simplify the operation of the regulations." F.R. Doc. 49-7437, Sept. 14, 1949. (24 C.F.R., 1949 Supp., 142.2).

Sec. 146.1 authorizes the Board to appoint a conservator or receiver for a Federal savings and loan association if the Board finds that the association is conducting its business in an unlawful or unauthorized manner, is pursuing a course that is jeopardizing or injurious to the interests of its members, or the public, or has refused or failed to observe a lawful order of the Board. It is clear that if the Board determines that defendant's advertising methods violate Sec. 161.7(e) (note 3 herein) or that it is carrying on the business of a bank, it has plenary power to correct any improper or unlawful practices. Sec. 1464(a), Title 12, U.S.C.A. The functions and powers of the Board do not end with the promulgation of rules. Sec. 1464(b), *Ibid*.

It is held in *Trans-Pacific Airlines v. Hawaiian Airlines*, 9 Cir., 174 F. (2d) 63 (1949) at page 66, that where uniformity of interpretation of rules and

consistency in application, in view of an overall policy, is compelled by legislative mandate, then primary jurisdiction is in the administrative body and not in the courts. *Aircraft, etc., Corp. v. Hirsch*, 331 U.S. 752, 67 S.Ct. 1493 (1947).⁵

We hold that the Home Loan Bank Board had and still has primary jurisdiction over the subject matter of this action.

II.

The doctrine is also well settled that no one is entitled to judicial relief until available administrative remedies have been exhausted.

As stated by the late Justice Rutledge, in *Aircraft & Diesel Equipt. Corp. v. Hirsch*, 331 U. S. 752, at p. 767, [105] 67 S. Ct. 1493, 1500 (1947), the doctrine of exhaustion of administrative remedies is one "of pursuing them to their appropriate conclusion, and, correlatively, of awaiting their final outcome before seeking judicial intervention. The very purpose of providing either an exclusive or an initial and preliminary administrative determination is to secure the administrative judgment either, in the one case, in substitution for judicial decision, or, in the other, as foundation for or perchance to make unnecessary later judicial proceedings."

The courts should not assume in advance that an administrative hearing will not be fairly conducted. *Fahey v. Mallonee*, *supra*. The doctrine cannot be circumvented by asserting that the Board lacks power or jurisdiction over the subject matter, since no one is entitled to judicial relief for a supposed

or threatened injury until all available administrative remedies are actually exhausted. *Myers v. Bethlehem Shipbuilding Co.* 303 U. S. 41, 58 S. Ct. 459 (1938); *Gates v. Wood*, 4 Cir. 169 F. (2d) 440, 442-443 (1948).

The Courts are not charged with general guardianship against all potential mischief in the complicated tasks of government. Congress, which creates and sustains federal administrative agencies must be trusted to correct whatever defects experience may reveal. Interference by the courts with administrative remedies and their exhaustion is not conducive to the development of habits of responsibility in administrative agencies. *F.C.C. v. Pottsville Broadcasting Co.* 309 U. S. 134, 146, 60 S. Ct. 437, 443 (1940); *Hart v. Landis*, 103 A.C.A. 338, 229 P. 2d 380 (1951).

Congress need not supply an administrative agency with a specific formula for its guidance in a field, as here, [106] where flexibility and the adaptation, by the Home Loan Bank Board, of the policy of Congress to infinitely variable conditions, constitute the essence of the program. *Lichter v. U.S.* 334 U.S. 742, 785, 68 S. Ct. 1294, 1316 (1948); *Mallonee v. Fahey*, *supra*, Sec. 1464, Title 12, U.S.C.A.; *Trans-Pacific Airlines v. Hawaiian Airlines*, 9 Cir., *supra*.

It is also clear that this court lacks power to grant injunctive relief for a supposed or threatened injury before administrative remedies have been exhausted. *Mallonee v. Fahey*, *supra*. *Macauley v.*

Waterman S.S. Co., 327 U.S. 540, 543-544, 66 S. Ct. 712, 714 (1946).

Likewise, whether or not plaintiffs have a right to judicial review, after exhausting administrative remedies, is a matter with which this court is not presently concerned. *Fahey v. Mallonee*, supra.⁶

Finally, whether or not there exists a legal impediment of an administrative nature to the exercise of jurisdiction by the Board, is an issue, primarily, for the Board's determination, which is not subject to review until final action is taken by it. *Bland Lbr. Co. v. N.L.R.B.*, 5 Cir. 177 F. (2d) 555 (1949).

We hold that the state court had no jurisdiction of the subject matter.

III.

If, as we have held, the state court was without jurisdiction of the subject matter, then the District Court could not acquire jurisdiction by the removal. *Lambert Run Coal Co. v. B. & O. Ry. Co.*, 258 U.S. 377, 382, 42 S. Ct. 349, 351 (1922). *Freeman v. Bee Machine Co.*, 319 U.S. 448, 449, 63 S. Ct. 1146, 1147 (1943). *Minnesota v. U.S.*, 305 U.S. 382, 389, 59 S. Ct. 292, 295 (1939). [107]

IV.

In *Bethlehem Steel Co. v. N.Y. State Labor Relations Board*, 330 U.S. 767, 773, 774, 67 S. Ct. 1026, 1030 (1947), the Court states: "When Congress has outlined its policy in rather general and inclusive terms and delegated determination of their specific application to an administrative tribunal, the mere

fact of delegation of power to deal with the general matter, without agency action, might preclude any state action if it is clear that Congress has intended no regulation except its own. [Cases cited.] In other cases, Congress has passed statutes which initiate regulation of certain activities, but where effective regulation must wait upon the issuance of rules by an administrative body. In the interval before those rules are established, this Court has usually held that the police power of the State may be exercised. [Cases cited.] But when federal administration has made comprehensive regulations effectively governing the subject matter of the statute, the Court has said that a state regulation in the field of the statute is invalid even though that particular phase of the subject has not been taken up by the federal agency." *Motor Coach Employees v. Wisconsin*, 340 U.S. 383, 71 S. Ct. 359.

Not only does the act of Congress which authorized the creation, operation and supervision of federal savings and loan associations by the Home Loan Bank Board, embrace the entire field, but the comprehensive rules and regulations adopted by the Board clearly meet the test of covering the subject matter of the statute. Congress has the power to protect the instrumentalities which it has created. U.S. Constitution, Art. I, sec. 8, cl. 18, *U.S.C.A. Federal Land Bank v. Bismarck Lbr. Co.*, 314 U.S. 95, 62 S.Ct. 1 (1941). It seems [108] clear that Congress has preempted the field, making invalid the state statutes plaintiffs rely upon (note 1) when attempted to be invoked against a Fed-

eral savings and loan association. U.S. Constitution, Art. VI, cl. 2, U.S.C.A. First Fed. Sav. & Loan Assn. v. Martin, *supra*.

Plaintiffs point to decisions⁷ holding that although Federal savings and loan associations are instrumentalities of the United States, they are not exempt from state taxation, and urge that the courts have thereby recognized that such associations are subject to regulatory state statutes. However, Sec. 1464(h) Title 12, U.S.C.A, expressly permits state taxation so long as the tax imposed is not "greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions."

The further contention is made that federal instrumentalities are subject to state laws unless those laws infringe on the national law or upon the functions of the agency, and rely upon decisions concerning National banks, principally *Anderson Nat'l. Bank v. Lueckett*, 321 U.S. 233 (1944) 64 S.Ct. 599. The cited decision held, in effect, that a state statute relating to escheat of inactive accounts was valid, since it concerned the debtor-creditor relationship of a bank with its depositors, and national law had not attempted to enter that field.

As stated in *Eddy v. Home Federal Sav. & Loan Assn.* 60 Cal. App. 2d 42, 140 P 2d 156: "Further, a savings and loan association organized under the Home Owners Loan Act is not a national bank, and the powers and duties of the two materially differ." As to national banks, Congress expressly left open a field for state regulation and the appli-

cation of state laws; but as to federal savings and loan associations, [109] Congress made plenary, preemptive delegation to the Board to organize, incorporate, supervise and regulate, leaving no field for state supervision.⁸

Independent research discloses a decision by an intermediary appellate state court which seems to support the contentions of plaintiffs. In *re* Baldwinsville Federal Sav. & Loan Assn. 268 App. Div. 414, 1024, 51 N.Y. Supp. 2d 816 (1944). The court there held that a state statute, providing a summary remedy for the determination of the validity of an election of directors was valid as not interfering with the purposes of the creation of the association, destroying its efficiency or conflicting with paramount federal law.⁹ The court found that the association was a domestic corporation, and hence amenable to state law.¹⁰ As said by that court, on page 819, 51 N.Y.S. 2d: "The record does not disclose whether any rules or regulations, other than the charter, were prescribed for this association by the Board." But under Rules 148.1 and 149.2, if the Board found that election of directors was held contrary to the prescribed bylaws of an association and Roberts' Rules of Order, it could appoint a conservator, although the association was financially sound, and order a new election, to be supervised by a representative of the Board. Nor did the New York court mention the doctrine of exhaustion of administrative remedies.

The Baldwinsville case, which we decline to follow, illustrates the "disparities, confusions and

conflicts which would follow if the Government's general authority were subject to local controls." U.S. v. Allegheny County, 322 U.S. 174, at 183, 64 S. Ct. 908, at 913 (1944). The congressional mandate for uniformity would be destroyed if these associations were subject to federal control, plus concurrent state control, which latter control might vary in every one of the [110] forty-eight states.

To put it charitably, the Board may have been lackadaisical in the exercise of its plenary powers but this does not, per se, breathe validity into state regulatory statutes within a field preempted by the Federal government. *Bethlehem Steel Co. vs. State Labor Board*, *supra*. The Board possesses the power to correct the matters complained of by the plaintiff by the enforcement of its own regulations.

We hold that the state statutes which plaintiffs seek to enforce are invalid, as applied to this defendant.

V.

Since the statutes upon which the complaint is based are invalid as applied to this defendant, a federal instrumentality, the complaint fails to state a claim upon which relief may be granted. We have also held that plaintiffs have not exhausted available administrative remedies, and that primary jurisdiction of the subject matter is in the Home Loan Bank Board. Likewise, we have held that the state court had no jurisdiction over the subject matter of the action, and, hence, this court has none. Under all the circumstances, the action should be dismissed. *Aircraft, etc., Corp. v. Hirsch*, *supra*.

Armour & Co. v. Alton Ry. Co. 312 U.S. 195, 61 S.Ct. 498 (1941); Jones v. Brush, 9 Cir. 143 F. (2d) 733 (1944).

Defendant will prepare a judgment of dismissal, within the time provided by the rules of this court. Such judgment shall be without prejudice to the right of plaintiffs to pursue and exhaust administrative remedies. [111]

Footnotes

¹Sec. 102, Banking Code (formerly Sec. 2, Act 652, Calif. Genl. Laws), defines the word "bank" as any incorporate banking institution which shall have been incorporated to conduct the business of receiving money on deposit; "the soliciting, receiving or accepting of money or its equivalent on deposit as a regular business shall be deemed to be doing a commercial or savings bank business, whether such deposit is made subject to check or is evidenced by a certificate of deposit, a pass-book, a note, a receipt or other writing . . . It shall be unlawful for any corporation . . . to engage in or transact a banking business within this State except by means of a corporation duly organized for such purpose."

Sec. 3390, Banking Code (formerly part of Sec. 12, Act 652) provides that no person, without prior authority of the superintendent shall solicit or receive deposits "or transact business in the way or manner of a commercial (or) savings bank."

Sec. 3391, Banking Code, (formerly part of Sec. 12, Act 652) provides that no person, unless authorized by the Superintendent to engage in the banking business, shall use words in any advertisement or sign indicating that it receives deposits or that such business is the business of a commercial or savings bank, or, without express statutory authority, transact business in any manner as to lead the public to believe that its business is that of a bank.

Sec. 3393, Banking Code, (formerly part of Sec. 12, Act 652): "Any building and loan association

may issue shares and investment certificates and do such other [112] business as may be authorized by the laws of the State relating to building and loan associations, but no building and loan association shall advertise or hold itself out to the public as a savings bank."

Sec. 3395, Banking Code, (formerly part of Sec. 12, Act. 652): "Any person . . . violating any provisions of the foregoing sections . . . shall be liable to the people of the State in the amount of \$100 a day . . . during which such violation continues. Any court of competent jurisdiction in a proceeding brought by the superintendent may enjoin any persons from using words . . . or from transacting business in violation of this code or in such manner as to lead the public to believe that its business is that of a bank, commercial bank (or) savings bank."

^{1a}Sec. 11 of the defendant's charter concerning "Redemption" and Sec. 12 concerning "Repurchase" contain standard provisions which a Federal Savings and Loan Association may insist on in connection with withdrawals.

²Four adjoining windows bore the following signs, respectively: "Coast Federal," "Federal insurance," "Savings accounts," and "Member of Federal Home Loan Bank"; the emphasized words appeared in much larger lettering, either above or below the other word or words on each window.

^{2a}"Suggestions for Federal Savings and Loan Association in giving information to the public."

³Sec. 161.7(e): Regulations Relating to Housing and Housing Credit (24 C.F.R. 1949 Ed., Sec. 161.7(e). No association shall use advertising (whether printed, radio, display or of any other nature), or make any representation which is inaccurate in any [113] particular, or which in any way misrepresents its services, contracts, investments or financial condition. [The Board, by Sec. 141.5 of its Regulations incorporated by reference

various matters published in the Federal Register, concerning the management, supervision and control of federal savings and loan associations.]

⁴The concession must be made. *Federal Savings & Loan Ins. Corp. v. Kearney Trust Co.*, 8 Cir. 151 F. (2d) 720. *First Fed. Sav. & Loan Assn. v. Danaher*, 128 Conn. 78, 20 A2d 455, 463-464 (1941). *State v. Minnesota Fed. Sav. & Loan Assn.*, 218 Minn. 229, 15 NW 2d 568 (1944); *First Fed. Sav. & Loan Assn. v. Loomis*, 7 Cir. 97 F. (2d) 831, 121 A.L.R. 99.

⁵See also, "Doctrine of Primary Administrative Jurisdiction," 42 Am. Jur. 698, Sec. 254, et seq.

⁶See *Willapoint Oysters, Inc., v. Ewing*, 9 Cir. 174 F. (2d) 676, cert. den. 338 U.S. 860, reh. den. 339 U.S. 945; and Sec. 1009, Title 5, U.S.C.A.

⁷*State v. Minnesota Fed. Sav. & Loan Assn.*, 218 Minn. 229, 15 NW 2d 568, 573; *First Fed. Sav. & Loan Assn. v. Danaher*, supra; *First Fed. Sav. & Loan Assn. v. Johnson*, 49 Cal. App. 2d 465, 122 P 2d 84 (1942).

⁸See Deering's (Calif.) Gen'l Laws, Act 986, Secs. 1.02 and 12.11, 3d para., and Act 988, which exclude Federal savings and loan associations from control by the State Building and Loan Commissioner. [114]

⁹The New York statute is similar to Secs. 2236-2238, Calif. Corp. Code.

¹⁰Civ. Pr. Act Sec. 7, sub. 7: "A 'domestic corporation' is a corporation created under laws of this state or located in this state and created by or under the laws of the United States." Defendant, here, is not a "domestic" corporation under the laws of California. Sec. 106, Corp. Code.

[Endorsed]: Filed June 21, 1951. [115]

At a stated term, to wit: The February Term, A.D. 1951, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday the 21st day of June in the year of our Lord one thousand nine hundred and fifty-one.

Present: The Honorable James M. Carter,
District Judge.

[Title of Cause.]

MINUTE ORDER

The Court having taken this cause under submission after trial, and the cause having been duly considered, the Court now hands down its Opinion, which is filed herein by the Clerk; and, pursuant to said Opinion

It Is Ordered that the above-entitled action be dismissed, and counsel for defendant is directed to prepare and present findings of fact, conclusions of law and judgment of dismissal pursuant to local Rule 7, within ten days. [116]

[Title of District Court and Cause.]

**FINDINGS OF FACT AND CONCLUSIONS
OF LAW**

The above-entitled cause came on regularly for pretrial hearing on February 23, 1950, and again on November 15, 1950, and came on regularly for trial on February 12, 1951, before the Court sitting without a jury, and the Court having heard the testimony and having examined the proofs offered by the respective parties, and the cause having been submitted to the Court for decision, and the Court being fully advised in the premises now makes its findings of fact and conclusions of law. Although the Court orders the action dismissed, the Court having tried the case on the merits, makes findings of fact and conclusions of law for consideration of the appellate court in the event of an appeal.

Findings of Fact**I.**

Plaintiff Maurice C. Sparling is, and was at all times mentioned in the complaint, the duly appointed, qualified, and acting Superintendent of Banks of the State of California. [117]

II.

The defendant Coast Federal Savings and Loan Association is and was at all times mentioned in the complaint a corporation organized under and pursuant to the provisions of the Acts of Congress of the United States of America, and the provisions

of said Acts as set forth in 12 U. S. Code Annotated 1464. The defendant at all times had its principal place of business in the County of Los Angeles, State of California, and at all times was subject to the jurisdiction, regulation and control of the Home Loan Bank Board, as authorized by said Acts of Congress.

III.

The defendant is and was at all times mentioned in the complaint a savings and loan association as defined and empowered by the aforesaid Acts of Congress; that the defendant does not have and has not had at any time mentioned in the complaint any certificate from the Superintendent of Banks of the State of California and does not have and has not had at any time mentioned in the complaint any authority, right or permit from, by or under the State of California or the United States of America to engage in or transact a banking business as defined by the laws of the State of California and of the United States of America, as distinguished from the transaction of business as a savings and loan association under said foregoing laws and the rules and regulations of the Home Loan Bank Board.

IV.

Defendant has not transacted any business other than strictly within the limited perimeter of its expressly authorized field. Although the defendant has done the things which are shown in the stipulation of facts, in so doing it has conducted exactly

the type of business contemplated by the Federal statute and rules and regulations under which it was organized and operates. [118]

V.

Defendant has conducted its business as a federal savings and loan association in the manner authorized by the said Acts of Congress and the rules and regulations of the Home Loan Bank Board and has solicited and received from members of the public moneys for savings as authorized and contemplated by the said Acts of Congress and said rules and regulations of said Board. The defendant has not solicited nor has it received moneys from the public as deposits within the meaning of that word as used by 12 U.S.C.A. 1464b. Defendant has not solicited nor received savings nor transacted any business in the way or manner of a bank or savings bank or in such a way or manner as to lead the public to believe that its business was or is that of a bank or savings bank, except as defendant has solicited and received savings and done business in the way and manner of a federal savings and loan association and in the way and manner authorized by federal statutes or regulations; the extent to which the way and manner of business of a federal savings and loan association coincides with the way and manner of business of a bank or savings bank this Court does not decide.

VI.

The defendant is a member of the Federal Home

Loan Bank. Defendant has in its advertisements stated it was a member of said Bank. Defendant has not advertised nor publicized nor transacted any business nor solicited any business as a bank or as conducting a banking business or maintaining or operating a banking office; nor has defendant represented, indicated or held itself out to the public or otherwise as a bank or as transacting a banking business or maintaining a banking office; nor has defendant done any act or thing which would indicate or lead its customers or the members of the public to believe that the defendant was engaged in or conducting any other business than that of a federal savings and loan [119] association as authorized by the aforesaid Acts of Congress and rules and regulations of said Home Loan Bank Board.

VII.

In the course of the transaction of its business the defendant has used certain signs, advertising, and publicity for the purpose of calling to the attention of the public the type and manner of savings and loan business it was conducting. Said signs, advertising, and other publicity used by the said defendant was in connection with its federal savings and loan business and was done in good faith. Said signs, advertising, and publicity in no way misled or deceived the members of the public in inducing or causing any of them to patronize the business of defendant as a bank or as an institution conducting a banking business or maintain-

ing a banking office. The use of said signs, advertising, and publicity was not done or performed in a way or manner as to lead or for the purpose or with the intent of leading, nor did the same indicate that or lead any of the public to believe that defendant was a bank or that defendant's business was that of a bank or of a savings bank or that defendant was engaged in or transacting a banking business, or that defendant was authorized or empowered to engage in or transact a banking business, or that defendant was maintaining a banking office. There was no evidence offered or introduced by the plaintiff that any member of the public was misled or deceived as a result of the signs, publicity or advertising matter used by the defendant or as a result of any other act or conduct of defendant or that any member of the public was misled or deceived at all.

VIII.

That in the conduct and operation of its business the defendant at no time created the relation of debtor and creditor between its savings customers and itself, did not receive or solicit any money as deposits as a bank or as a savings bank or do or perform or advertise the doing or performing of any act or thing contrary [120] to or in violation of the Acts of Congress or the rules and regulations of the Home Loan Bank Board. Defendant at all times did carry on, conduct and operate its business in the manner and as prescribed by said Home Loan Bank Board. None of the acts of defendant in the conduct or operation of its business violated

or were contrary to the provisions of the laws of the State of California.

IX.

The defendant in the operation of its business as a federal savings and loan association has for many years advertised and referred to itself as "Coast Federal Savings"; in so doing the defendant has acted in good faith and not as to lead or cause to be misled its customers or the members of the public and no evidence was introduced or offered by the plaintiff that any of the public was misled or that any member of the public dealt with the defendant under the belief or assumption that it was other than a federal savings and loan association. In so doing defendant has not advertised or held itself out to the public as a bank or savings bank.

X.

The words "bank" and "banking business" are used in these findings in the limited sense to refer to institutions defined as banks by the California Banking Code or subject to the supervision of the California Superintendent of Banks and to the business of such institutions. As between these institutions and federal savings and loan associations no attempt has been made to segregate or demarcate their proper spheres of business in the general banking and financial world.

XI.

The defendant is chartered by the Home Loan Bank Board for the purpose of promoting thrift

by providing a convenient and safe method for people to save and invest money and to provide for the sound and economical financing of homes. All the evidence presented [121] shows defendant to have followed and adopted the best practices of local mutual thrift and home-financing institutions as intended by its charter. The defendant in its publicity and advertising matter has encouraged its customers and the members of the public to practice thrift, to place their savings with the defendant, has advertised that the defendant is a member of the Federal Savings and Loan Insurance Corporation, that savings placed with defendant are insured by said federal insurance corporation up to \$10,000 per account and has engaged in other practices, all of which are approved by the said Home Loan Bank Board. The business of the defendant has been successful and its financial statement shows it to be financially sound. The defendant issued two types of account, namely, an investment share account in multiples of \$100 and a savings share account in any amount. In opening an account, the defendant issues to its customer a membership certificate either in a separate certificate or in a passbook, and said certificate constitutes said customer a member of the defendant entitling said certificate holder to one vote at all membership meetings for every \$100 or fraction of the \$100 certificates, but not to exceed a total of fifty votes.

XII.

The Home Loan Bank Board possesses ample power to regulate all of the business and affairs of the defendant and to correct any violations of the Acts of Congress or its rules and regulations. The plaintiff possesses no such power or authority over the defendant. The exercise of the powers urged by the plaintiff would defeat the purposes of the Home Owners Loan Act by bringing about regulations and supervision of a varying and conflicting character in the forty-eight states.

XIII.

The plaintiff has at no time requested or petitioned the Home Loan Bank Board for a hearing or other administrative action [122] concerning the manner in which the defendant was conducting its savings and loan business.

Conclusions of Law

From the foregoing findings of fact the Court adopts the following conclusions of law:

I.

Defendant is an instrumentality and agency of the United States Government.

II.

The Home Loan Bank Board had and still has primary jurisdiction over the subject matter of this action.

III.

Plaintiff is afforded by federal law and regulations an administrative remedy for grievances alleged. Before the State court can have jurisdiction of the subject matter it is necessary that plaintiff exhaust its administrative remedy, that is that it pursue that remedy to its appropriate conclusion and await its final outcome. This plaintiff has not done. Therefore, the State court had no jurisdiction of the subject matter and on removal to the District Court it is likewise without jurisdiction of the subject matter.

IV.

The federal government has exclusive jurisdiction to regulate and supervise defendant. The Act of Congress under which defendant is organized and the rules and regulations of the Federal Savings and Loan insurance Corporation and the Home Loan Bank Board, to which agency Congress has delegated plenary power over defendant, comprehensively cover and effectively govern the entire field of operations of defendant. These make it clear that Congress intended no regulation of defendant except by the federal government and that Congress intended that the federal government should [123] and that the federal government has preempted the entire field of regulation and supervision of defendant leaving no jurisdiction whatever in the states to regulate or supervise the operation of defendant by either legislative or administrative action or otherwise. Therefore, the

state statutes relied on by plaintiff are invalid as applied to the defendant.

V.

All the advertising and other acts of defendant which are complained of by plaintiff in its complaint have been expressly or impliedly authorized by federal authority with the possible exception of the one isolated and unrepeatd instance when defendant's house organ used the word "interest." The State laws invoked by plaintiff are in conflict with this authority and are for this additional reason invalid as applied to defendant.

VI.

By virtue of defendant's charter, the rules and regulations of the Home Loan Bank Board, and the Act of Congress under which defendant was created, defendant has the authority, right and permit from the United States Government to solicit and receive savings and to use in its business and advertising the words "savings" and "savings account."

VII.

To impose on defendant and other federal savings and loan associations the invoked state statutes would hamper, frustrate and impair the functioning of the uniform nationwide federal savings and loan system intended by Congress. The state statutes are, for this additional reason, invalid as applied to defendant.

VIII.

The California Legislature did not intend that any of the California statutes cited by plaintiff should be applied to defendant or other federal savings and loan associations. [124]

IX.

Plaintiff's complaint and each of the counts thereof fails to state a claim against defendant upon which relief can be granted.

X.

Defendant has not forfeited nor is it liable to the State of California for any sum whatsoever.

XI.

Plaintiff is not entitled to an injunction or restraining order, nor any other relief.

XII.

Defendant is entitled to judgment in its favor and for its costs incurred herein.

.....,

Judge of the District Court.

Lodged July 6, 1951.

[Endorsed]: Filed (not used by Court) August 3, 1951. [125]

In the District Court of the United States for the
Southern District of California, Central Division

No. 10528-C

PEOPLE OF THE STATE OF CALIFORNIA
and MAURICE C. SPARLING, as Superin-
tendent of Banks of the State of California,

Plaintiffs,

vs.

COAST FEDERAL SAVINGS AND LOAN
ASSOCIATION, a Corporation,

Defendant.

JUDGMENT FOR DEFENDANT

This cause came on regularly for trial before the Court sitting without a jury, on the 12th day of February, 1951, and the Court having heard the testimony and having examined the proofs offered by the respective parties, and the Court being fully advised in the premises, the Court now adopts its opinion as its findings of fact and conclusions of law, and directs that judgment be entered in accordance therewith; now, therefore:

It Is Hereby Ordered, Adjudged and Decreed:

That plaintiff take nothing by this action but that the same be and is hereby dismissed. That defendant have and recover of the plaintiff costs taxed at \$73.32. That this judgment shall be with-

out prejudice to the right of plaintiffs to [126]
pursue and exhaust administrative remedies.

Dated Aug. 3, 1951.

/s/ JAMES M. CARTER,

Judge of the District Court.

Approved as to Form.

.....,
Attorney for Plaintiff.

Receipt of copy acknowledged.

Lodged July 6, 1951.

[Endorsed]: Filed August 3, 1951.

Docketed and entered August 7, 1951. [127]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that the People of the State of California and Maurice C. Sparling, as Superintendent of Banks of the State of California, plaintiffs above named, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Judgment docketed and entered herein on

August 7, 1951, in favor of the defendant and against the plaintiffs.

Dated August 30, 1951.

EDMUND G. BROWN,
Attorney General of the State
of California.

WALTER L. BOWERS,
Assistant Attorney General.

/s/ BAYARD RHONE,

Deputy Attorney General, Attorneys for Plaintiffs
and Appellants.

Affidavits of Service by Mail attached.

[Endorsed]: Filed September 4, 1951. [128]

[Title of District Court and Cause.]

APPELLANTS' DESIGNATION OF RECORD
ON APPEAL

To the Clerk of the above-entitled court:

The appellants, People of the State of California and Maurice C. Sparling, as Superintendent of Banks of the State of California, through counsel, have appealed from the Judgment which was entered in the above-entitled matter on August 7, 1951, and hereby request the preparation of the record on appeal.

The appellants hereby designate the papers and records on file or lodged with you which they desire

to have incorporated in the record on appeal, which consists of the complete record pursuant to Rule 75(d) of the Rules of Civil Procedure for the United States District Court, which records and papers include and are hereby designated as follows:

1. Complaint for Injunction to Restrain Violation of State Banking Code and for Penalties; [131]
2. Petition for Removal of Civil Action;
3. Notice of Petition for Removal of Civil Action;
4. Answer to Complaint (for Injunction to Restrain Violation of State Banking Code, and for Penalties);
5. Stipulation dated March 8, 1950, relative to Exhibit "A" of Plaintiffs' Complaint;
6. Stipulation of Facts for the Purpose of Trial;
7. Petition for Leave to Appear as Amicus Curiae and Order thereon;
8. Opinion of the Court filed June 21, 1951;
9. Minute Order of June 21, 1951;
10. Judgment docketed and entered on August 7, 1951;
11. Reporter's Transcript of Proceedings at the trial of said action on February 12, 1951, a copy of which is attached hereto;
12. All Exhibits;
13. Notice of Appeal;
14. Appellants' Designation of Record on Appeal.

Pursuant to the provisions of Rule 75(o) of Rules

of Civil Procedure for the United States District Court, and Rule 11 of the Rules of the United States Court of Appeals for the Ninth Circuit as amended, request is hereby made that the Clerk of the above-entitled court transmit all of the original papers and exhibits as designated by the appellants, and the appellees, and the files dealing with the action or proceeding in which the appeal has been taken.

Dated August 30, 1951.

EDMUND G. BROWN,
Attorney General of the State
of California.

WALTER L. BOWERS,
Assistant Attorney General.

/s/ BAYARD RHONE,

Deputy Attorney General, Attorneys for the People
of the State of California and Maurice C.
Sparling, as Superintendent of Banks of the
State of California, Plaintiffs and Appellants.

[Endorsed]: Filed September 4, 1951 [132]

In the United States District Court, Southern
District of California, Central Division

No. 10528-C

PEOPLE OF THE STATE OF CALIFORNIA
and MAURICE C. SPARLING, as Superin-
tendent of Banks of the State of California,

Plaintiffs,

vs.

COAST FEDERAL SAVINGS AND LOAN AS-
SOCIATION, a Corporation,

Defendant.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Honorable James M. Carter, Judge Presiding.

Appearances:

For the Plaintiffs:

FRED N. HOWSER,
Attorney General, State of
California, by

WALTER L. BOWERS, ESQ.,
Assistant Attorney General.

For the Defendant:

FRANK P. DOHERTY, ESQ., and
CRAIL & CRAIL, by
FRANK P. DOHERTY, ESQ., and
HARRY McMAHON, ESQ.

Also Present:

W. F. McKENNA,

Assistant General Counsel, Home Loan
Bank Board, Washington, D. C.

JAMES C. SHEPPARD, ESQ., and

FRANK S. BALTHIS, ESQ.

Thursday, February 23, 1950. 10:00 A.M.

The Clerk: No. 10528-C Civil, People of the State of California, and others, v. Coast Federal Savings and Loan Association, for pretrial hearing and setting.

Mr. Doherty: If the court please, I see the State of California represented here by Assistant Attorney General Walter Bowers. He is so modest, he didn't announce his presence. Mr. McMahon and I are here representing the defendant Coast Federal Savings and Loan Association. What order does your Honor desire to proceed in? Do you wish to hear from the State first?

The Court: Ordinarily in these pretrial matters we hold them in chambers, and they are rather informal. If you want to conduct it here in the courtroom, we can, or we can bring the reporter into chambers where we can smoke and discuss the matters that come up.

As far as procedure, the purpose of a pretrial, as I understand it, is to find out what the issues are in the case, what the contentions of the parties are, what theories you have, then to find out what

matters can be stipulated to and agreed upon, and generally facilitate the eventual trial of the case. As a matter of fact, it is my theory that a pre-trial is a part of the trial; that somewhere in the trial it is necessary for a person or a lawyer to [2*] put his cards face up on the table, and it is my theory that a pretrial is that time. In other words, if you have some theory that you are going to spring at trial, I want to hear about it at the pre-trial and not have it held back and then sprung upon me and opposing counsel at that time.

Mr. Doherty: Would your Honor prefer to have the hearing in chambers or open court, or part in open court and then later a conference in chambers?

The Court: Well, as I understood the suggestion of counsel, when this matter was set, it was called a pretrial, but it was to be a rather general exploration of the issues.

Mr. Doherty: Yes, your Honor.

The Court: I think we might as well adjourn to chambers, bring the reporter in there, and make ourselves comfortable.

Mr. Doherty: May I take into chambers with me Mr. McKenna representing the Home Loan Bank Board, and Mr. Sheppard and Mr. Balthis, who represent the California Savings & Loan Association?

The Court: You may. We will adjourn to chambers, then.

(The following proceedings were had in the chambers of the court:)

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

Mr. Bowers: Judge, maybe we had better state our position, because we, at least, think it is very simple. In other words, we go upon the premise that a savings and loan association is not a banking organization at all, and that it [3] may not carry on banking business, and we think that the acts complained of by the defendant in this case lead the public to believe that it is engaged in banking. And that is all that we are trying to prevent, the particular actions that we think give the public the idea that the defendant is carrying on a banking business. Primarily on that we think that they should use their name, including the "Savings and Loan Association" part.

The Court: I read the memorandums over and the file. I noticed your complaint on that score. Specifically, also, you complain of their solicitation of money, don't you?

Mr. Bowers: That's right. In our opinion the ordinary connotation of a savings account is a bank account and not a savings investment.

The Court: I want you to enlarge upon that. It is a little hard for me to understand that point. I can understand how you might complain of their use of names or titles, and so forth, but there were matters contained in your pretrial memorandum that indicated that the State objected to their soliciting money. It seems to me——

Mr. Bowers: No. We have no objection to their soliciting money. In other words, that is part of their business, they solicit investments, savings investments. But what we do object to is their em-

phasizing the opening of savings accounts, which we think in common parlance indicates a [4] savings bank account. In other words, we have no idea or no authority to regulate the business of a savings and loan association, but we think it goes beyond that when it gives the appearance to the public that it is doing a savings bank business.

The Court: What type of solicitation do you think a savings and loan, building and loan, a federal institution, could lawfully carry on?

Mr. Bowers: Carry on all of the operations of an ordinary building and loan. We think savings and loan and building and loan are practically synonymous.

The Court: What type of lawful solicitations do you think it could engage in?

Mr. Bowers: Savings investments. Any of their solicitation that they make is perfectly unobjectionable to us, except the indication therein emphasizing savings accounts.

The Court: In other words, if they run an ad and say, "We solicit savings investments, Coast Federal Savings and Loan Association," you would have no objection?

Mr. Bowers: No objection at all.

The Court: But if they ran an ad and said, "We solicit savings accounts"——

Mr. Bowers: And said, "Open your savings account with us, Coast Federal Savings," we think that tends to lead the public to believe that they are getting into a regular savings [5] bank account.

Mr. McMahon: May I ask Mr. Bowers a question?

Mr. Bowers: Yes.

Mr. McMahon: If the Federal Government permitted us to use the term "savings accounts," would you object?

Mr. Bowers: I think we would object upon the ground that we do not think that the federal statute permits that. In other words, as I take it, the federal statute expressly prohibits the taking of deposits.

Mr. McMahon: Sir——

Mr. Doherty: I was going to suggest to my Irish friend, let the State develop their case entirely, and then let us state ours fully, without engaging in colloquy between counsel. We Irish have a faculty, Judge, of always trying to get into every fight.

Mr. McMahon: I apologize.

The Court: I am Irish, too, so I know what you mean.

Mr. Bowers, what I was referring to was item 6 in your pretrial memorandum. You say: "The powers and duties of such savings and loan associations are not too clearly set forth by the Federal Act. However, as stated in Section 1464, they are primarily 'to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes.' "

In other words, it gets down, then, largely, in your [6] contention, to a matter of language. If they say "We solicit your investment, open an ac-

count with us," do you object to the word "account," for instance?

Mr. Bowers: I don't think that making an investment is opening an account. I think every time they do anything to lead the public to believe that when they put money in there that they are opening an account only and not making an investment, that they are then tending to advertise it is in the nature of a banking business. I think that is the distinction. "Invest your savings with us," we have no objection to that at all. That is what their purpose is.

The Court: These building and loans pay a fixed per cent on amounts deposited with them, don't they, depending on the resolutions passed by the building and loan?

Mr. Bowers: I believe they do.

The Court: One might be two, one might be three.

Mr. Bowers: Yes, I believe they do.

The Court: What is the difference essentially, as a practical matter, between going down and opening a savings account with a bank and getting one per cent or one and a half, whatever they pay on a savings account, and going down and putting a thousand dollars with a building and loan and getting interest on it?

Mr. Bowers: They are making an investment there and becoming the business itself, and they are not standing on [7] the basis of an account of a debtor-creditor position.

The Court: Do you think the public have any general conception of that distinction?

Mr. Bowers: I believe they do. In other words, if there is no distinction, if we are wrong on the proposition that there is no distinction between an investment in a savings and loan or building and loan, and depositing money in a bank, then we have no case. There is no question about that.

The Court: Of course, what the public thinks probably is beside the point. The matter would be controlled by statute, laws, and cases. But I am wondering as a practical matter if the public generally have any conception of that distinction. Don't they ordinarily think when they put money with any savings and loan or building and loan, that they are putting a certain amount of money in there which will draw interest and which they can pull down later on, with possibly some exceptions about having to give notice if notice is required? Doesn't the building and loan have a right, if demand is made for money, to require a certain period before money can be pulled out? What is that period, three months?

Mr. McKenna: After the end of the month they have to put them on a rotating basis so that all of the money of the association can be used only to a limited extent for other [8] purposes than to meet withdrawals, but there is no specific time within which they have to meet withdrawals.

The Court: But if they want to meet them——

Mr. McKenna: As a matter of fact, every as-

sociation in the United States meets them immediately.

Mr. Doherty: Savings banks have the same provision in the law, that you must give 30 days' notice. But the savings banks never insist upon it or require it, and would not require it, I guess, except in a time of stress where they might, with the consent of the comptroller of the currency or bank superintendents, insist that no savings account be withdrawn excepting on 30 days' notice. But it is the law, and it is in their pass-books, and the law is, with the federal savings and loan, that when an account there wants its money, and they are not able to pay, as Mr. McKenna says, then the Board puts them on a sort of pro rata basis until they begin complying. But that doesn't apply, because under the federal law they can immediately make a claim on the insurance company or ask for a loan, or advance, from the Federal Home Loan Board. That is correct, isn't it? And put up their securities? In other words, transfer their assets to the extent needed to pay all obligations. I am only quoting Mr. Crail, that he could be liquid in 30 days and pay every claim he has by turning in his government bonds and taking his home loans, mortgages, trust deeds on home [9] loans, and turning them over to the head of the institution and get cash immediately. Is that correct?

Mr. McKenna: If his Honor is interested, I might give a brief outline of how they do convert from frozen to liquid. There is a dual system. First a Federal Home Loan Bank system was created

as a parallel system to the Federal Reserve system to provide a source of reserve credit similar to that provided by the Federal Reserve Bank system to the commercial banks, so when it needs cash, when it is in a frozen condition, it can raise that cash from the Federal Home Loan Bank of which it is a member, without liquidating its mortgages, by depositing those mortgages with the bank and obtaining a loan on the security of them. That is a normal means whereby a building and loan obtains credit when it needs it, converting from a frozen to a liquid condition. In time of emergency there is also the Federal Savings and Loan Insurance Corporation. That is the corporation which guarantees the face value of the savings up to \$5,000 in every association that is insured, but the Insurance Corporation doesn't only pay off the saver—it does that when the Association can't meet the obligation—but it will also make cash available in time of emergency to an association so it can pay off the saver.

Mr. Doherty: Judge, if you would like to hear our viewpoint briefly I will try to give it to you briefly. [10]

The Court: I think I have your point, Mr. McKenna. Let me explore it a little further. Mr. Bowers, you mentioned that under the savings and loan set-up a person makes an investment and becomes an investor in this particular enterprise, it is money being used for loans for homes. There is a reverse end to that, is there not, that the fellow who borrows money from the building and loan

is also technically some type of a member, isn't he? That came to me as a sock, and I am a lawyer. I borrowed money on a little house that my father and mother lived in, I went down and applied for a loan, as you would to a bank, and got a loan. When the thing was finally granted I got a book which said something about being a member in this association. That was the first intimation I ever had that there was a membership or a participation on the borrowing side.

But, actually, for all intents and purposes for the conduct of business the fellow who borrows money is borrowing it from the building and loan just as he would from a bank; he gives his security, makes his payments, and if he doesn't pay, it is foreclosed on him. Is there any other legal result that flows from that purported membership that you get in that little book?

Mr. McKenna: There is, of course, the voting power in the Association, which is rarely exercised.

The Court: Does the borrower have a vote, [11] too?

Mr. McKenna: Yes. There is a fundamental purpose which is twofold in the case of a savings and loan association. One purpose is to promote economical home financing. The association exists not just to make money, but to provide a means for financing homes. That is one aspect that is supposed to be shown or illustrated by the fact that the borrower is a member.

The Court: Mr. Bowers, your contention is that it is largely a matter of the language that is used?

Mr. Bowers: I think so. I don't think there is any doubt at all but what the defendant is carrying on, so far as what it actually does, savings and loan association business. But I think that what we object to is the way in which the advertising leads people to believe that it is carrying regular savings accounts, such as a savings bank account.

The Court: Mr. Figg, do you have the original file?

The Clerk: Yes.

The Court: The exhibits weren't attached to my copies.

Mr. Doherty: The exhibits are a part of the plaintiff's complaint, photostats.

The Clerk: They weren't sent over with the record on removal.

Mr. Bowers: There is a copy, your Honor.

Mr. Doherty: It should be a part of that original complaint, [12] photostats.

The Clerk: Was the complaint amended after it was removed? There is no amended complaint, is there?

Mr. Bowers: No.

The Clerk: Were they so large that they wouldn't go in the file?

Mr. McMahon: We have had other ones made, and if you want to compare them later—

Mr. Doherty: I think his Honor now has a copy,—which were an exhibit of the Attorney General's complaint, and those are identical with the original complaint.

Mr. Bowers: As far as I know. I am more or less pinch-hitting for Mr. Rhone here.

The Court: I have a copy here for today, and later on you can arrange to see that the clerk's file has a complete copy of the exhibits.

Mr. Doherty: With the court's permission the clerk could attach them. It would be the application of defendant to correct his record on removal.

The Court: That permission will be granted, and you agree with counsel what you are attaching, send up a stipulation on it, and then Mr. Figg can put it in the file.

I notice the first picture here. I take it what you object to is the word "Bank" in big letters?

Mr. Bowers: That is emphasizing, as I say, the bank [13] feature.

Mr. Doherty: The first and second pictures are both about the same, "Savings Accounts," "Member Federal Home Loan Bank," with the word "Bank" emphasized.

The third picture is "Coast Federal Savings" emphasized with the word "Coast" in large letters.

The next picture has the words "Coast Federal Savings" with "Joe Crail, President" under it.

"Open Your Savings Account Here." The last one is a sort of a catch-all of everything.

The Court: I noticed in the defendant's pretrial memorandum that they said there was one instance in which complaint had been made to, I believe it was, the size of the word "Bank," and that it had been corrected. Were these pictures taken after that alleged correction or before?

Mr. Doherty: They were taken before. There was a suggestion from the representative of the Federal Home Loan Bank that the word "Bank" be slightly de-emphasized. It was not an order. And it was changed. That is correct, isn't it, Mr. McMahon?

Mr. McMahon: Yes, changed before this action was filed.

The Court: Then I take it you object, also Mr. Bowers, to this advertising, for instance, which shows an account book, a thumb and finger holding up an account book? Is that one of the things you object to? [14]

Mr. Bowers: That is one of them, with, I think, "Coast Federal Savings." "Open Your Account With Coast Federal Savings," I believe it is.

The Court: You object to that?

Mr. Bowers: We object to that.

The Court: Because of the picture of the book or because of the word "Account" or "Savings" or what?

Mr. Bowers: Because of the word "Savings Account" and "Coast Federal Savings" without "And Loan Association." I think probably there would be no objection whatsoever if the full name was used at all times.

The Court: If they used the full name you would not object to the picture of the book and the statement "Open Your Savings Account"?

Mr. Bowers: Let me tell you this: I think "Savings Account"—that the word "Account" should not be used, because it seems to me that "Savings

Account" connotates something different than what the actual transaction is. I don't know whether it is the position of the defendant—Frank, is it your position that when you open a savings account in a bank and when you put your savings in a savings and loan association you are in exactly the same position?

Mr. Doherty: No, we don't claim any debtor and creditor relationship in the federal savings and loan. To all intents and purposes from the standpoint of the person who puts the [15] money in it is the same. In other words, a federal savings and loan does not want short-term deposits, it does not want accounts where the depositor or the investor says, "I want my money back" next week or next month. If they were to say that to Coast Federal Savings, Coast Federal Savings would say, "No, you go over to the bank and put that in the bank"; which is a fact. If they say, "I want to put this in for 30 days," or "60 days," well, we don't want that type of business. We want long-term investments. You want to put that in a bank. You can't put in a thousand dollars now and draw out \$100 next week and \$100 each week. We don't want that type of business.

That is correct, isn't it, Mr. McMahon?

Mr. McMahon: Yes, sir.

The Court: What minimum do they generally fix? At least a year?

Mr. Doherty: They advertise that they want long-term investments, and they want the accounts to stay with them. I do not know of any instance

where they say it must be in for three months or six months or a year. But when they learn from the very nature of the conversation with the person who opens the account that it is going to be for a short term, then the inquiry is made, "How short?" And if it is just for a brief period, it is then said that they do not want that business. That belongs in a bank. Go over to a [16] bank and not an institution of this sort.

Fundamentally, Judge, this whole thing gets down, as I indicated in open court when this matter came up,—it is a matter of both federal and state policy. If the Attorney General's position was correct that the State has power to enact laws controlling the business of a federal savings and loan, they could not only go as far as the Attorney General is now contending, but they could go and completely prohibit them. In other words, if we concede that you can't use the word "savings," that you can't use the word "accounts," that you can't use the words "member Federal Home Loan Bank," then the State could go in and say, "You can't use the word 'bank' at all, you can't use the word 'account,' you can't use the word 'savings,' you can't use the word 'return.' " They could go further and say, "You cannot invest in particular types of securities."

Now, the Act starts off, as your Honor has read, with the bank, where it says, "to provide for the financing of homes, * * *" but right down in the next section (c) it says, "any portion of the assets of such associations may be invested in obligations

of the United States or the stock or bonds of a Federal Home Loan Bank.”

It gives them a very wide field of investment.

We will take it, for instance, the Attorney General relies upon Section 100 of the Banking Code. It reads: [17]

“This Code is applicable to the following:

(b) All national banking associations”——

Keep in mind the bank superintendent only has supervision over state banks.

“All national banking associations authorized to transact business in this state to the extent that the provisions of this Code are not inconsistent with and do not infringe paramount federal laws * * *.”

In other words, in creating the National Banking Act, Congress explicitly stated that Congress in the Federal Government has supreme jurisdiction in certain fields, and in other fields it says the State may have jurisdiction, such as subpoenaing records and the matter of keeping records, and things of that sort; that Congress did not go into that. So this particular section 100 had been amended to read as follows, that it has jurisdiction over all federal savings and loan business except where it is inconsistent and does not infringe upon paramount laws.

The Court: Of course that is the legal question involved here right on the nose, what is the authority of the State of California in connection with a federal institution?

Mr. Doherty: That is correct.

The Court: As a practical matter, let me ask this about banks. Doesn't the State Superintendent of Banks limit his [18] activities largely to State banks that aren't national banks?

Mr. Bowers: I think primarily so, yes. But you understand that we are by no means attempting to say that we can regulate federal savings and loan associations. We have nothing to do with federal savings and loan associations, so far as they function within their authorized powers. When they go beyond their authorized powers, we don't think that because they are federal institutions——

The Court: Who is going to determine that? Is the State going to determine it, or is some federal agency going to determine it?

Mr. Bowers: I think that is a matter that the court has to determine, isn't it? In other words, a federal institution just can't run hog-wild and say, "I am a federal institution and I do as I please," whether it has authority from the federal government to do it or not.

Mr. Doherty: May I answer that briefly? The National Banking Act, your Honor, gives practically supreme authority to the comptroller of the currency, that is, the treasury department comptroller of the currency, over national banks. The state superintendent, if he attempted to walk into a national bank for the purpose of examining their records, the janitor would greet him, he wouldn't get up as high as anyone else. But they extend the courtesy to the bank superintendent so that there will be a happy relationship between [19] state

banks and federal banks, and they sort of coordinate their activities.

The Court: But the state superintendent does limit his activities practically exclusively to state banks?

Mr. Doherty: Correct.

The Court: Does he exercise any jurisdiction at all over national banks in this field of records that you mentioned?

Mr. Doherty: The federal law is silent or acquiesces in the State having jurisdiction over letting the bank records be subjected to subpoena, subpoena duces tecum, and retaining the records for a certain period of time where they must be available for litigants, and things of that sort. That is, the federal act either affirmatively in some places and by acquiescence in others gives that jurisdiction to the State.

In California we have a Building and Loan Commissioner. The Building and Loan Commissioner wouldn't attempt to come in and exercise jurisdiction over a federal savings and Loan association. There are a lot of state building and loan associations, savings and loan, some are stock and some are mutual companies. This is the crux of this case, your Honor. Your Honor said to what extent should there be federal authority and state authority? In creating the National Banking Act, as I said, the Congress at that time was more jealous of state rights than they were when we reached into the early '30s. [20] This Federal Home

Loan Bank Act was enacted at the tail end of the Hoover administration, then was amplified and its powers increased in the early part of President Roosevelt's administration. It was enacted, first, I think, in July of 1932, then it went on in '33, '34 and '35. When they enacted this law they gave vast powers to the Board, and that was power evidenced by rules and regulations. They start off with this simple language, as your Honor has read:

"In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes the Board is authorized, under such rules and regulations as it may prescribe, * * *."

Now, that was an affirmative act of Congress. That is not in the National Banking Act. It doesn't give the Comptroller of the Currency complete authority by rules and regulations to determine the jurisdiction of federal banks and their activities, but the Board here was giving rules and regulations. So this company, the Coast Federal Savings, is in this position: They are operating under an Act of Congress where the Board has prescribed rules and regulations that have the power of law, and these rules and regulations tell Coast Federal Savings how they are to transact business. And it is the only logical way it could be done. If the Attorney General's position was right, we would have forty-eight [21] different types of federal savings and loans in the United States. We would have forty-eight conglomerate methods. One with vast powers

and one with practically no powers. So the federal government by its Act of Congress has given this Board wide authority, and as the case of Finnegan says, which we referred to in our memorandum:

“Corporations organized under the Act have the lawful right to transact its business within a state under the sole authority and control of the laws of the United States free from state interference.”

The Court: That is the meat of the whole case. I am familiar with the power of the Home Loan Board. Is that what you call it?

Mr. McKenna: Home Loan Bank Board.

The Court: And I have also had some experience with these matters where a building and loan was doing something which ran afoul of the regulations of the Board. I recall one case where they sent out a file and asked the prosecution of a building and loan because of improper advertising in the paper. They were advertising in such a way that it was violative of one of these regulations that has the force of law.

I saw the ad and it seemed apparent to me there must have been some error, so we communicated with the building and loan and they made representations, which I believe were true, [22] that the particular advertising had occurred by reason of a printer's mistake, and agreed to correct it, and so forth. So when they made the correction and gave assurances it wouldn't happen again we declined prosecution on it. That is when I was upstairs.

There apparently is ample power under those

regulations to discipline these building and loans. There is some question sometimes as to how that administrative power is exercised, which depends upon the length of the chancellor's nose. As in equity, you might have strict enforcement of those regulations, and then, again, you might have lax enforcement. I am talking offhand; I am not making any decision on this. But it seems to me it is essentially the business of the federal government to regulate its own agencies.

Mr. Bowers: I don't think there is any question about the fact that a national bank doing a trust company business does it subject to the laws of the State; doesn't it?

Mr. Doherty: A federal bank?

Mr. Bowers: Yes.

Mr. Doherty: That is because the National Banking Act makes it so. If the federal government had said in the National Bank Act that the powers of a national bank doing a trust business shall be prescribed by the Comptroller of the Currency and rules and regulations, the state law would not even be in the picture. [23]

Mr. Bowers: That's right, but when they are doing a trust company business, they are going beyond their authority or authorization as a national bank, and therefore they are subject to the state laws.

Mr. Doherty: That is where the federal law is silent on the question, or by implication yields it to the State. But not where the federal law says it assumes jurisdiction.

The Court: Don't these rules and regulations go so far as to practically specify what a building and loan can do and what it can't?

Mr. McKenna: In great detail.

The Court: It is my understanding that there is great detail in outlining things they may do and things they may not do. It goes even further than what an ordinary statute would do.

Mr. Doherty: Much more detailed than a statute. Mr. Crail in operating this company down here, he can't operate under the Building and Loan Commissioner, he can't operate under the Superintendent of Banks; he must look to the source of his authority and comply with their rules and regulations. Then if he varies from that he is cited. In the case of this word "bank" I don't think the Board construed that as a violation, but in order to work out a comity, the suggestion is made "reduce the size of the word; make the Federal Home Loan Bank not emphasizing the word 'bank'" and [24] it was done.

As I indicated in open court, your Honor, this is a matter primarily where the State Superintendent, the Comptroller of the Currency and the Board down in Washington ought to sit down and say——

The Court: By comity?

Mr. Doherty: Yes. (Continuing) ——out in California these things are happening. Now, what is the policy of the Board and the Comptroller of the Currency on these matters, because I know you

must operate uniformly throughout the United States?

In the Middle West and East they have mutual savings banks. That is the name given them. These are old-time institutions. But they are really building and loan associations. What the banks overlook is this: that building and loan associations have been in the home loan business for over a century, and savings banks in California have been earlier than others, but only by a few years, and advertising trust deeds and mortgages has only for 20 years been engaged in by banks. The savings and loan people could be in this court and say, "Here, banks are invading our field, they are advertising for loans on homes, that is our field, we have been in that field for a century."

The Court: It seems to me that the principle that is involved here is this: You have a government agency authorized [25] by a statute to be controlled by regulations which the Board is empowered to make. Now, if that agency, building and loan, we will say, branches out to an entirely different line of business, supposing it sets up a bar, is going to operate a bar——

Mr. Doherty: Or a trust business.

The Court: I took an extreme case, a silly one, but a trust business would be a better one. Then it seems to me that the State would have some authority on that new kind of business. But as long as its business is confined to generally what the statute provides, even though it is run poorly, it seems to me it is federal business, it is a matter of

federal jurisdiction, not of the State, if I make myself clear.

Let's assume for argument that these building and loans are run sloppily and poorly, and that there is a complete disregard of these federal regulations, I can't see offhand—and I am only talking offhand now—how that gives the State any jurisdiction in the matter to even inquire. I think they would have the right to take it up through comity with the comptroller, in the case of a bank, or with the Home Loan Bank Board in the case of building and loans. But how badly a federal instrumentality is operated doesn't cause it to cease being a federal instrumentality.

Mr. Bowers: That is perfectly correct, and we are not [26] concerned with its operations, whether they are good or poor, within their field or scope.

The Court: You claim they are clear outside of their scope?

Mr. Bowers: We claim they are going outside of their scope in advertising in such a way as to lead the public to believe that they are doing savings bank business.

Assuming now, if we can, I think from what Mr. Doherty says they don't contend that they are entitled to do a savings bank business.

The Court: This is very similar to the problem that I had up with your office with Bill Bonelli on the seizure of that officers' club at San Diego.

Mr. Bowers: That is right.

The Court: There there was an officers' club operated by the federal government through, I

guess, the Navy, wasn't it?—a Navy officers' club, and it was on city property which the government didn't own, the city just permitted them to be there, but the club was a government instrumentality. Now, Mr. Bonelli contended that, actually, instead of being open just to officers it was open to anybody, practically a blind pig in the city park, and Bonelli went down and—when I say "Bonelli" I mean the Board of Equalization—arrested the bartenders, seized the liquor, and took it away. We finally settled it in conference between Mr. Bonelli and [27] myself, but I took the position that no matter how poorly the agency was run it was still a government instrumentality and he had no more right to step in and seize the liquor and arrest the bartenders of a federal officers' club than he would have to seize a battleship or an army tank because something was improper in the way it was being handled.

Mr. Bowers: I don't believe the State would be limited to have to say that it had no authority or direction, assuming——

The Court: The question comes up, then, is the Coast Federal operating outside of the scope of its powers and duties as provided by statutes and regulations?

Mr. Bowers: I think that is the question, yes.

The Court: Or is it merely operating irregularly within those powers?

Mr. Bowers: Yes. If it is operating irregularly within those powers, it is a federal matter to adjust.

But we don't think they can go in there and violate the state laws in other matters.

For instance, we don't think they could go down there and put a 20-story building up there.

The Court: I will concede if Coast Federal, having been given certain powers and duties by statute and by regulation, proceeds to do certain business, carry on business not contemplated by the statute, then they would come under applicable state [28] law. But it seems to me there has to be a complete break into some new field. As long as they are sticking to the field that they are authorized to operate in—in other words, it couldn't be some matter of slight degree, there would have to be some major movement in a new field, it seems to me, to come under your theory.

Mr. Bowers: Supposing they put out ads all over the place "Our business is banking," that comes down to it. That is a violation, according to our state law. Now, is their business banking? If it isn't, are they because they are doing an investment business—

The Court: Let's see what they have done. They are actually not doing banking, because you are conceding they are doing the things and in the way provided by statute. But what they are doing is stating that they are doing banking.

Mr. Bowers: That is right.

The Court: Therefore, isn't that a matter that should be administratively corrected by the Home Loan Bank Board that has control over this institution? They are doing puffing, they are talking

too much about what they are doing, but they are not actually doing banking.

Mr. Bowers: That is right. But they are violating a state law in representing that they are, which to my mind is just the same position as though they erected a 20-story building [29] contrary to law, or violated any other laws in connection with their business, although it was not that they were actually operating illegally so far as their savings and loan association business was concerned.

Mr. Doherty: I might answer your Honor's suggestion, or, rather, the Attorney General, on that matter of doing a banking business. That arose rather innocently. They had put out a paper called the Challenger, and they had a contest, and a woman wrote in a good slogan would be, "Our business is banking, banking is our business." Now, that was just an excerpt from a letter, and that is what the State seized upon as advertising. And, to my recollection, it only appeared once, is that right?

Mr. McMahon: That is right.

The Court: Did it only appear in this column?

Mr. Doherty: Yes.

The Court: All they did was quote a letter, they didn't carry it into their slogans in any way?

Mr. Doherty: That is the whole story. We never adopted a slogan. It was just simply a courtesy to some woman who wrote in a letter.

The Court: Free speech.

Mr. Doherty: If we take the position of the

Attorney General on the matter of Coast Federal Savings, suppose he should bring the Bank of America in and say, "You are representing [30] yourself here as a state bank." "Why are we?" "Because everywhere in great big letters is 'Bank of America,' when you are 'Bank of America National Trust and Savings Association,' and you are not putting that down in small letters, but everything on your passbook, your windows, and your ads is 'Bank of America.' You are advertising yourself or giving the people to understand that you are a state bank when the fact is you are not." Well, now, there is no merit in that. No more than there is any merit that when they say "Coast Federal Savings," that they are indicating that they are a state savings bank, because they don't say anything about a bank. They say "Coast Federal Savings." Everybody understands at this time that the federal government has gotten behind and given its active support to federal savings and loan associations in order to help the home building, to stabilize our economy, to bring a closer relationship between the federal government and home owners as a competitive field to banks and insurance companies.

In other words, heretofore banks and local building and loan associations occupied the entire field. In a time of stress they found out that was not adequate to protect the home owners, so they organized, as Mr. McKenna says, a parallel system to the Federal Reserve System, but put it over in savings and loan, to encourage people to make long-term

savings, to encourage thrift, to loan money at a low rate of [31] interest to people to buy and own homes. That is a national policy, a policy that every government is interested in, for people to own homes. Now, to say to the Coast Federal Savings and all these others—I might digress for a minute. The Attorney General is in the very odd position here of taking this position for the banks, when the Building and Loan Commissioner is at his other shoulder saying, “You take the position directly opposite to this, you are my attorney, too.” The State Building and Loan Commissioner is directly opposed to the position of the State Superintendent of Banks in this case. He wants no interference by the banks encroaching in the Savings and Loan field.

The Court: As a matter of policy, I can see it to be a pretty dangerous thing to say that the State—forty-eight states is what you would be saying—could step in and start interesting themselves in how federal building and loan associations are being operated.

I have another thought in this matter. You can quote me on this if you want to. This Home Loan Bank Board has done a lot of vacillating in the positions it has taken, and I think there have been times I had to step in in cases where it should have stepped in, because of probably the Long Beach case, and it has probably not done as good a job as it might have done in some of these situations. I would agree that the Coast Federal Savings

and Loan should not have a big [32] sign "Bank" that would look like it was a bank on the corner.

You tell me that it has been corrected.

It seems to me that the Home Loan Bank Board has power and authority to regulate savings and loans where problems like this probably wouldn't come up. But as far as the State having a cause of action—this is a suit for injunction, isn't it?

Mr. Bowers: Yes.

Mr. Doherty: And a penalty, \$100 a day.

The Court: That is my offhand view on it.

Let me ask you this, since we are talking about issues. You set forth these pictures in the People's complaint of this word "bank." It now appears, at least by a statement of counsel—I don't know whether it appears in the answer or not—that that was corrected before the suit was ever commenced. If you are seeking an injunction, you cannot get an injunction on something that was done in the past, it has to be something that was done as of the time that the suit was filed, and ordinarily there has to be the threat of continuing injury.

Mr. Bowers: Brought down to the time of judgment.

The Court: Yes. That raises the question whether you want to amend your complaint before this matter would go to trial, because if that factual situation is borne out, that that matter that you complain of was corrected before you [33] filed your suit, at least that part of your suit is out the window to start with, isn't that correct?

Mr. Bowers: That would be true. But we think that is just one of the factors in the whole situation of giving the impression that they are doing a banking business.

Mr. Doherty: I was going to suggest, your Honor—whether it is possible or not I don't know—I wish the State Superintendent was here, because he is a very fine public official.

Mr. Bowers: Frank, he asked to be here, and I assumed that this was to be merely a conference between the judge and the attorneys and I told him he couldn't be here.

Mr. Doherty: He is a very fine official.

Mr. Bowers: Mr. Mortimer wanted to be represented, and I told him he was not in the case at this stage of the proceedings.

Mr. Doherty: What has been said here, if the Attorney General could confer with the State Superintendent of Banks and the State Building and Loan Commissioner, and see if they couldn't work out some plan of comity with the Comptroller of the Currency and the Federal Home Loan Bank Board, where if it isn't covered now by regulation, any colorable or technical violation, it could be covered by a regulation. Because I don't think this court or any court, your Honor, can run a thing under the jurisdiction of an agency, of [34] the nature of a savings and loan association or a bank. The Comptroller of the Currency runs the national banks, the Board runs the savings and loan associations. I am satisfied that if the Attorney General and the State Superintendent of

Banks, the Superintendent of Building and Loan Associations, would get together with the federal authorities they could work out a workable plan.

The Court: It seems to me that such a conference might well be in order.

Mr. Doherty: Mr. Sheppard here is representing the savings and loan associations. Do you represent both federal and state?

Mr. Sheppard: We are appearing on behalf of the California Savings and Loan League, which has within its membership both state and federal savings and loan associations.

Mr. Doherty: What is the position of the Savings and Loan League with respect to the position of the Bank Superintendent in this matter?

Mr. Sheppard: We are very much interested in the question which has been discussed here, particularly points 3 and 4, which are made in the defendant's pretrial memorandum, and also in points 5 and 6, namely, a construction of the federal statute itself and the point which you have raised; if it developed further we would like to be heard on it at the [35] proper time. We agree thoroughly with what you have said with reference to the ambit of federal authority.

Mr. Bowers: Well, as a matter of fact, Frank, you had a consultation with the State Superintendent of Banks and myself, and I believe Mr. Rhone was present, two or three months ago, at which apparently you and the State Superintendent and ourselves were of the same mind.

Mr. Doherty: That is correct.

Mr. Bowers: We have been waiting ever since then for a development to come, because you were to take it up with your client.

Mr. Doherty: Here is the situation, your Honor: I always feel that lawyers who have any real co-operative spirit can get together sometimes and work out a case much better than bringing it into court, and I said at that time to the Bank Superintendent that Mr. Crail and the Coast Federal were not a bank in the accepted sense of a commercial bank, that they would not take money on deposit which would be subject to check, that they did not want, as a matter of policy, to take deposits for a short term, that they wanted long-term investments, that they were essentially a federal institution. When I got into it deeper—at that time I had not gone into the statutes—I found that anything that we might agree upon would be something that we should have the full approval of the Board. In other words, the Board might say, “Now, you [36] have made this agreement with the State Superintendent, but that is not our policy as a Board.”

What I have been trying to work out, and that is one reason Mr. McKenna has been interested in it, is the position of the Board on matters of this sort. In other words, whatever is done here in this suit, or by reason of a compromise, must be almost national in scope. They cannot establish a rule in a given case——

The Court: Without applying it elsewhere?

Mr. Doherty: Correct. And I could not agree

that our client, the Coast Federal Savings and Loan Association, make a commitment by stipulation or other agreement that would run in conflict with what the Board says should be done in a like case, because they say, "We ignore that; we told you to run your business this way, and now you have gone ahead and made an agreement with the bank superintendent to run contrary to our rules and regulations and our policies, and we can't agree." So, as I say, it was sort of lifted by force of law out of my jurisdiction, and I have had conferences with Mr. McKenna, I have had conferences with the Building and Loan group, to see if we couldn't work out an over-all policy that will be uniform in Los Angeles, San Francisco, Boston, Cincinnati or elsewhere. It is national in scope and not just a private litigation between two individuals.

Am I stating it reasonably accurate, Mr. McKenna? [37]

Mr. McKenna: I might state as far as our relations with the State authorities are concerned, the State Building and Loan Commissioner, they always have been close and amicable, and there isn't, as we understand it, any disagreement whatsoever in our supervision and the State Superintendent. There never has been any friction. As far as this terminology is concerned, we don't permit federal savings and loan associations to advertise that they are banks. That is in the interest of national uniformity, because in some parts of the country, building and loan associations are called banks. But we don't permit federal savings and loan associa-

tions to use that term. They are not banks as we understand it. We do permit them to use the term "savings account." That is also a national rule. I might state, historically "savings account" has been used for a long, long while by mutual savings institutions, by building and loan associations, and by mutual savings banks. It carries the connotation not of a checking account or deposit account, but just what it is, a savings account. It is something quite different than a deposit or checking account. As far as the terminology code of the Coast Savings, it should use the full name when it is not inconvenient to do otherwise. But we don't criticize associations for saying "Coast Federal Savings" as a matter of convenience. It is clumsy at times, every time you pick up a telephone to say "Coast Federal Savings and Loan Association." It [38] is certainly not improper for them to stop with the "Savings."

I think, and certainly hope, this can be settled without litigation, on friendly terms, with the State authorities, because we want to maintain our friendly relations with them.

The Court: Don't you think we have gone about as far as we can today on it?

Mr. Doherty: I would think so, your Honor. I would make this suggestion. This is where your Honor sort of need not commit yourself. If the Attorney General and the Building and Loan Commissioner, the State Superintendent of Banks, Mr. McKenna, Mr. Sheppard, should sit down and try to harmonize this situation and then take it on

back to Washington to see if the Board would agree on a sort of general policy, if a Board action is necessary, that there would be a sort of uniform policy up and down the State where the harmonious relations between State Building and Loan Associations and Federal Savings and Loan Associations, which have been harmonious up to date, would continue to be so, and where the banks would have no objection that anyone is attempting to invade their particular field, that would be the best thing. I have said from the beginning this is not a case for the courts, it is a case for comity, working out a plan for the common interest.

The Court: Nothing I have said here today do I want to be any decision in the matter. I am just discussing it with [39] you and giving you my slant on it. I might read a lot of cases that somebody would cite and change my mind. But I have expressed my first reaction to the problem. I agree with Mr. Doherty that it seems to me the first thing that ought to be done is to explore the possibilities of settling this matter upon some basis satisfactory to all parties. In fact, you know, according to these judges who write on pretrial procedures, one of the by-products of pretrial procedures is settlements. That is not the purpose of pretrial, but that is one of the by-products. It has been considered proper to get attorneys in here, even in personal injury cases that we get on diversity, and say to the attorneys, "How far apart are you on settlement now that we have discussed the matter?

See what you can do to assist in settlement.” Some judges go quite far in that.

I don’t think they should ever coerce a person, but judges have even gone so far as to express offhand their opinion as to whether under the facts as they understood them the claim was excessive or the offer was reasonable, and so forth.

At any rate, I think that is the first thing that ought to be done. I don’t think the case ought to be set for trial at this time.

Mr. Bowers: Am I interrupting?

The Court: No. Go ahead.

Mr. Bowers: I want it understood by the court and by Mr. [40] McKenna that the State has been in that position from the start and has so expressed itself, and has written Mr. Doherty and telephoned him inquiring as to what progress he was making on getting together for a settlement.

Mr. Doherty: They have been very co-operative, your Honor.

Mr. Bowers: I don’t think that there is any idea and I don’t want you to have any idea that the **State is taking any** position in opposition to the federal institutions at all. Of course, I do think, myself, and I am not a financier and I just look at the stuff in the ordinary common man-of-the-street parlance that when I see “savings accounts solicited” especially where they don’t use the savings and loan association name at all, that to my mind it immediately brings up a regular savings account in a bank. That is the thing that we think

is not proper, and that is all that we are looking to.

Mr. Doherty: Walter, you go back in the history and you will find that the banks are interlopers in this field of saving, they are new. The old building and loans, they have been in it for, I don't know, one hundred years or more, haven't they?

Mr. McMahon: Yes, sir.

Mr. Doherty: And it is a new field for banks, and one that I am happy to see them in. But the banks can't say, "We [41] have seen it, and now you people who have been seeing it for a long while must get out of it."

The Court: I don't think we will try to define specifically the issues as we would at a pretrial. If this case has to be tried later we will get you in here again and see what we can get together on in so far as the issues are concerned, and what can be stipulated to.

As a matter of fact, it seems to me if this case has to be tried there ought not be any dispute as to what the Coast Federal is doing, as long as the attorneys get together on the particular facts, that on a certain date there was the sign and there was the literature. It seems to me a lot of this matter on the evidence side ought to practically go in by stipulation.

Mr. Doherty: I had hoped that we would never get to the point where it is now; that an arrangement could be worked out to do away with litigation; because no matter how carefully you draw a judgment in matters of this sort, five, ten, fifteen

years from now it embarrasses the situation. You can't anticipate what is going to happen in 1960 in this fast-changing world.

Mr. Bowers: Frank, we agree with you that it is a matter, of course, that the Federal Board is interested in, but we have never approached the Federal Board, assuming that you, as a member of that institution, would do so and would take [42] it up. There have been intimations that this is just something between the banks and the savings and loan association. But as far as I know, I never have talked with any banking association representative and I don't believe—I don't know the gentleman here—but I don't believe there are any representatives from banking associations here. We are not interested in that here.

Mr. Doherty: You couldn't be, because you represent the building and loan associations too.

Mr. Bowers: A building and loan association has nothing to do with this. Our State Act specifically prohibits any banking activities.

Mr. Sheppard: May I suggest, Judge Carter, that perhaps Mr. Bowers would like to make an inquiry from Mr. McKenna while he is here?

Mr. Doherty: I think we ought not take up the court's time, Jim, on a matter of this sort. I think if Mr. McKenna and Mr. Bowers and myself, representing the group, and the Bank Superintendent would sit down, that in an hour you probably could come out of the door with a reasonably good agreement.

Mr. Bowers: I believe so.

The Court: I would be glad to make available my time if you want a further conference and want these men present, if any value could come out of that. [43]

Mr. Doherty: All right, your Honor.

The Court: I have appreciated this frank discussion. We have kind of let our hair down about it.

Mr. Bowers: I can't let much of mine down.

The Court: What shall we do? Put it on the April calendar or May calendar for setting and see what you have done by that time?

Mr. Bowers: You can make it any time. As I have told you, and as I have told Frank, the State has been standing ready to put other matters aside to get together.

Mr. Doherty: May would be all right.

The Court: We will put it on the May calendar. We don't like to drop them off the calendar.

Mr. Bowers: That is the first Monday in May?

The Clerk: That would be May 1st.

The Court: May 1st for setting. [44]

Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified

therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this .. day
of, A.D. 194...

/s/ SAMUEL GOLDSTEIN,
Official Reporter.

[Endorsed]: Filed April 27, 1950.

November 13, 1950, 2:00 o'Clock P.M.

(Other court matters.)

The Court: I see Mr. Doherty has come in. We might as well take these up in order. If you are ready to proceed on the Coast Federal case, we will go ahead on that.

Mr. Doherty: We are ready to proceed, your Honor, for the defendant. I assume the Attorney General is for the plaintiff. Does your Honor desire to hear it in chambers?

The Court: Yes.

(The following proceedings were had in the chambers of the court:)

Mr. Doherty: For the appearances, Mr. Rhone, Deputy Attorney General, for the State of California; Mr. McMahon and Frank P. Doherty, for the Coast Federal Savings and Loan Association; and Mr. Frank Noon, a representative of the Federal Home Loan Bank Board.

Is that correct?

Mr. Noon: Yes, Supervising Agent.

Mr. Doherty: For Southern California?

Mr. Noon: California, Nevada, Arizona, and Hawaii.

The Court: Ready to go?

Mr. Doherty: Yes.

The Court: The question in this case is a relatively simple one factually, whether or not the Coast Federal Savings [2*] and Loan is holding itself out as a bank, whether it is acting as a bank, and whether the plaintiff State Superintendent of Banks has any authority or control over the agency, because of its federal character.

That is what it boils down to, doesn't it?

Mr. Rhone: I think that is correct.

The Court: You practically have pled your evidence, haven't you? You don't have any other proof to offer other than the things you set forth in these counts?

Mr. Rhone: We have no other proof to offer. It may be, of course, necessary to produce some oral testimony on some of them, but most of it is set forth entirely in the various counts.

The Court: That is, at least it is alleged, and most of that is admitted.

Mr. Doherty: The allegation about the advertisement of the bank, your Honor, before this action was commenced, there had been a complaint made and that objection had been removed at the request of the Federal Home Loan Bank Board.

Is that correct, Mr. Noon?

Mr. Noon: At my request.

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

Mr. Doherty: Mr. Noon, representing the Federal Home Loan Bank. So the question of the advertising of the bank is no longer in issue, because the correction had been made.

The Court: That is the use of the big word "Bank" and [3] "Savings" that you have photographs of, is that the thing you are talking about?

Mr. Doherty: Yes, overemphasizing the name "Bank." It was corrected months before this action was commenced. We contend that we have a right to advertise for savings, and the defendant is a member of the Federal Home Loan Bank and has a right to advertise to that effect, because the Act of Congress says specifically that they are a member of the Federal Home Loan Bank Board, that is, Federal Home Loan Bank, and that is about the only issue here.

We take the position that Congress has pre-empted the field on federal savings and loan associations, has appointed a board that has complete jurisdiction over those matters, and having pre-empted the field the State Superintendent of Banks has no jurisdiction to come in on a matter of that sort and file suit against one of the associations merely because the State Bank Superintendent thinks that the actions of the defendant are in conflict with state law. Our position is that it ought to be a matter handled entirely between the State Superintendent of Banks and the Federal Home Loan Bank Board, and let them come to a rule or regulation announcing their respective fields and policies.

I asked Mr. Noon just before I came into court if there was anything in the Federal Home Loan Bank Act, or in their rules or regulations, that in any way restricted or prohibited [4] what was being done by the defendant in this case, and Mr. Noon states there is not.

Is that correct, Mr. Noon?

Mr. Noon: That is correct.

The Court: Apparently there has been no success in this effort to get the federal agency and the state agency together.

Mr. Rhone: We think there was success. On March 2nd of this year an agreement was reached.

The Court: What was that agreement?

Mr. Rhone: The agreement is stated here (handing paper to the court). I think you have a copy, Mr. Doherty, don't you?

The Court: This was a press release that was never issued.

Mr. Rhone: That is true, but the two paragraphs in there, numbered paragraphs, state the agreement that was arrived at.

Mr. Doherty: I might say, your Honor, that this is what happened: We had a conference in the Attorney General's office. It was attended by the State Superintendent and Mr. Rhone and Mr. Walter Bowers, and by Mr. McKenna and Mr. Noon representing the Federal agency, and by Mr. McMahon and I representing the defendant. And Mr. Joe Crail was also present. We discussed the matter from a broad angle, that the state and [5] federal agency shouldn't be in a quarrel over

this, they ought to get together, and it was there arranged that Mr. McKenna and Mr. Noon would meet with Mr. Sparling and have a discussion to see if they could work out some sort of an announcement which would be given to the press and then the action dismissed. This announcement was dictated by Mr. Bowers, as the substance of that arrangement. Mr. Noon and Mr. McKenna promptly stated that it would only be a private arrangement, because it would not be binding upon the federal agency unless the Federal Home Loan Bank Board agreed. I took the position with Mr. Bowers, the Assistant Attorney General, that we could not agree to the state's interpretation of paragraph 1, and that is Mr. Bowers said that all savings and loan associations should in all advertising and publicity fairly state or show that such entity is a, quote, "Savings and Loan Association," unquote.

I took the position that any time that the defendant advertised as "Coast Federal Savings" or "Coast Federal" that it was violating the agreement.

I am reading now from Mr. Bowers' letter to me of August 4th where I brought that up to him. Mr. Bowers said in his letter: "One of the important features which I thought everybody concurred in was that the savings and loan associations in California should in all advertising to be used fairly state or show that such entity was a 'Savings and Loan [6] Association.' As I recall certain ex-

ceptions to this were discussed, such as the fact that the Coast Federal Savings and Loan Association had a large neon sign on the top of the building occupied by it and that it would be very expensive to change that sign, and therefore that was not to be required to be changed, but that future advertising should show that the defendant in this matter was a federal savings and loan association. Since that time I have seen considerable newspaper advertising in which the only statement relative to the advertising entity was 'Coast Federal Savings.' "

And I said to Mr. Bowers if we had agreed to this interpretation of yours, the defendant would have been immediately in default and violating the understanding, and I could not become a party to an arrangement which would mean their interpretation, because all the advertising, all the publicity of the defendant was "Coast Federal Savings." And the Attorney General insisted that it ought to be "Coast Federal Savings and Loan Association," and I could not agree.

The Court: You never got together on that?

Mr. Doherty: Never got together on that. We didn't get together for the reasons that I stated.

The Court: If Mr. Doherty's position is right, that there is no jurisdiction in this court to enforce state statutes against this federal institution, then what I might think of these facts wouldn't make any difference. However, in count 4, [7] which charges the use of the name "Coast Federal Savings," it seems to me I recall the Home Loan Board asking me to prosecute a federal savings and loan

for using only part of their title. Now, if that is the policy, I think the enforcement should be consistent, and it seems to me that there were regulations cited on the use of the title.

Don't you have a regulation that a savings and loan must use its entire title?

Mr. Noon: No. And I have checked that today with the Board attorneys. There is no such regulation.

Mr. McMahon: I believe I checked pretty thoroughly on it, Judge, and the only pronouncement I found was a speech by former Chairman Divers of the Federal Home Loan Bank Board in which he said that, Blank Federal Savings was enough name, because the words "Federal" and "Savings" together would show anyone that it was a federal savings and loan association.

The Court: What was the advertisement that the Long Beach Building and Loan put out in which I was asked to prosecute them?

Mr. Noon: I don't believe I know. If I do, I have forgotten.

Mr. McMahon: Was that part of Fahey against Mallonee?

The Court: No, it had nothing to do with that except as maybe a by-product of it, but it was based on an ad that [8] they ran, and when I checked into it I found that it was an oversight of a printer or somebody.

Mr. McMahon: I remember that, sir. They used the FDIC seal in an ad when they should have used the Federal Savings and Loan Insurance Company

seal, and they later said that it was an oversight of the printer. That may be the one.

The Court: That may be it. I didn't prosecute them but I remember that your agency was bird-dogging these building and loans and making them live up to whatever those regulations were. I had the impression, however, that they had omitted part of their title in that ad. Maybe not.

Mr. Doherty: Even so, your Honor, we contend that the federal agency is the one to enforce that and not the state agency.

The Court: How about trying this case next week and having it out of the way?

Mr. Rhone: I can't do it.

The Court: I have some open time, a case is blowing up here.

Mr. Rhone: I am preparing a brief for the Circuit Court, and they have given me a warning that I have to get the brief in on time, no extensions.

Mr. McMahon: One difficulty is that Joe Crail leaves tonight for Washington. [9]

The Court: What would he have to be here for in the trial of this case?

Mr. Doherty: There is nothing to try, your Honor.

The Court: There is not very much to try. You bring in the advertisement, the pictures of the bank—I intend in this pre-trial order to have you gentlemen agree on these facts, as to what these advertisements are. I think you ought to be able to agree on practically every count, what has been done here,

and then it is just a question of law applied to those facts.

Isn't that the way you look at it, Mr. Rhone?

Mr. Rhone: I think that is true, and we intended to set the thing up that way when we drafted it.

The earliest open time I will have is the week of December, about 18th or 19th.

The Court: If we get together on a pre-trial stipulation with the facts pretty well agreed upon, is there any reason why this couldn't be tried some Monday afternoon? It would be just a matter of seeing that the record was complete and then arguing it a little bit. You have got all your briefs filed on the law as both sides see it.

Mr. Rhone: I think it could, except I think we have some more briefing to do on this question of alleged federal instrumentality.

The Court: You filed a pre-trial brief here, [10] didn't you?

Mr. Rhone: Yes, we did, but we would like to brief it further.

The Court: I think the case ought to be tried and disposed of.

How about Monday afternoon, December 18th?

Mr. Rhone: That is all right. I won't get the amount of briefing done that I ought to.

The Court: That is five weeks ahead.

Mr. Rhone: That's right. I have this brief I mentioned, I have two petitions for hearing in the State Supreme Court, and I have a mandamus suit with the City Board of Education against the——

Mr. Doherty: And we have a new Attorney General coming in.

Mr. Rhone: I have to get this all done.

The Court: Haven't you a young fellow over there who could do it?

The Clerk: Your Honor, you will have contested naturalization that afternoon. That is the third Monday in the month? Do you have that marked down? It might turn out that we will only have one or two.

The Court: Well, that won't be a good day, then. I have pre-trials, law and motion, and those contested matters. I couldn't hear it on that day. Let's put it on January 8th. [11]

Mr. Doherty: I have got a flock of cases, your Honor, that have got me jammed in the whole month of January. I am now getting cases continued out. There are three duplications in January on cases that I have. I was going to suggest a shorter method for it. If the Attorney General and I decide to agree on a stipulation of facts and then submit it to your Honor, with such memorandum of authorities as we wish, then you could try it yourself when your calendar permits it.

The Court: That would be workable, except Mr. Rhone has raised the point that he wants to file another brief, and he has wanted at least a month to file that brief. So that puts us over to about the 18th, here, of December, and then we have the Christmas holidays coming in, so we will either have to go into February to accommodate you, or we will have to drop back into the earlier part of December.

Mr. Doherty: I have been wondering about his point. If the court should find with us on the facts, that the word "Bank" is no longer being used, No. 1, and, No. 2, that "Coast Federal Savings" in no way misleads the public, then it is immaterial as to which agency has control, federal or state, because there is no issue before the court. If the court should find that the words "Coast Federal Savings" constitute improper advertising, then the question of which agency has jurisdiction, the state or the federal, would then [12] become material. In other words, if your Honor should find as a matter of fact that "Coast Federal Savings" is not misleading, is not representation of a bank, or an inducement or holding out to the public that it is a bank, and there should be evidence to support that, then the issue of whether the federal agency has jurisdiction or state would be out of the picture. If your Honor should hold that "Coast Federal Savings" is a misrepresentation to the public or in some way violates the law of the state, then the question of which agency has jurisdiction would become paramount, we contending it is federal——

The Court: If the court should determine that it had no jurisdiction over the matter, even if the language were misleading, that would dispose of it without going into the factual matters.

How much time do you want to write the brief? Do you feel you need a month or six weeks?

Mr. Rhone: I have this dispute that I am writing a brief on in the Circuit Court, and that has

to be filed December 2nd. I have two petitions for hearing in the State Supreme Court, and they have to be finished by December 5th on one, and the 13th on the other. And this mandamus case involving \$212,000 with the school board.

The Court: How about going into February? How about February 12th in the afternoon? [13]

Mr. Doherty: That is Lincoln's Birthday.

The Court: It is not a holiday over here, unless you gentlemen want to take it.

Mr. Doherty: No.

Mr. Rhone: We can't complain about it. We lose it, and that's all.

The Court: February 12th at 2:00 p.m. That is for trial.

Mr. Doherty: Thank you, your Honor.

The Court: Now, I want you to see if you can't get together on a pretrial stipulation whereby it is agreed that up to, whatever date it was, the Coast Federal used the word "Bank" as shown by photograph exhibit so-and-so attached to the complaint; that after such date the word "Bank" was not used in that size but was used in the size—don't you have another photograph?

Mr. Doherty: We can have one if it is now being used.

The Court: On the second cause, that it is probably true that the Coast Federal uses this ad shown on page 4 of the complaint about "Place your savings at Coast Federal for safety, for higher return, convenience, availability," and so forth. It seems to me that ought to be stipulated to.

Mr. Rhone: I think that was admitted in the answer.

The Court: Then there would be the issue of whether that had been put forth by Coast Federal for the purpose of [14] misleading, and whether it did actually mislead the public. That would still be an issue of fact.

Then in count 3 there is the allegation that the defendant solicited and received deposits and transacted business in the way and the manner of a bank and savings bank.

Mr. Doherty: That part we can't agree to.

The Court: Can't you agree on what you do, the facts?

Mr. Doherty: It can be agreed simply on the facts that we don't want commercial deposits or short-time deposits, and anyone that offers us a short-time deposit or checking account, we refer them to banks.

The Court: I think what the plaintiff has in mind there is they have a cage and teller, and somebody comes in and puts his money through a cage and gets a receipt. Is that what you have in mind with that allegation?

Mr. Rhone: We have in mind that they carry on, not business as a commercial bank, but business as a savings bank, and it has all the indications of a savings bank with a savings bank book, and receiving deposits and so on.

There has never been any contention that they do business as a commercial bank. We do not contend they ever have done or are threatening to.

The Court: Maybe you will be able to get together on count 3.

In count 4 there is the contention that the defendant [15] has held itself out as Coast Federal Savings.

Now, there is no dispute about that, is there?

Mr. Doherty: We admit that.

The Court: You ought to be able to get together on that.

Count 5 seems to be a recap of everything else.

I will ask that the plaintiff prepare that pre-trial stipulation and order. It will consist of one portion where you get together on as many facts as you can, and, secondly, where you outline what issues remain to be tried. Apparently there still would be some issues that would have to be tried, at least in the sense of drawing conclusions from what facts you have. You have the allegation that the defendant used the word "Bank" and so forth for the purpose of misleading the public. You don't intend to offer any evidence from the public on that, do you?

Mr. Rhone: No.

The Court: Just a question of what inference you would draw?

Mr. Rhone: A question of what inference the court would draw from the facts.

The Court: All right. If you want to file briefs, I think you ought to have your brief in by—I think the plaintiff ought to have its brief in—how much time would you want to look the brief over and reply to it? [16]

Mr. Doherty: If he gets the brief in by January 15th, would that be out of line?

Mr. Rhone: That is satisfactory.

Mr. Doherty: That gives you plenty of time on your Christmas holidays, and we could reply in two weeks. If we took two weeks after January 15th, that would give the court 10 days before the hearing.

The Court: All right. Brief to be filed the 1st of February, by the defendant.

Your pre-trial stipulation, how much time do you want on that? To January 15th on that, also?

Mr. Rhone: It should be either January 15th or 8th.

Mr. Doherty: It should be earlier, Mr. Rhone, because what you submit may need some modification by us.

Mr. Rhone: How about the 8th?

The Court: All right. January 8 to file your pre-trial stipulations.

Thank you very much.

Mr. Bailiff, call the people in the Loew's [17] case.

Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified

therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 29th day of November A.D., 1950.

/s/ SAMUEL GOLDSTEIN,
Official Reporter.

[Endorsed]: Filed September 25, 1951.

Monday, February 12, 1951. 2:00 P.M.

(Other court matters.)

The Court: Call the next case.

The Clerk: No. 10528-C, Civil People of the State of California, and others, v. Coast Federal Savings & Loan Association, for trial.

Mr. Rhone: Ready.

Mr. Doherty: We are ready for the defendant, your Honor.

Mr. Rhone: Mr. McMahon, did you hand the clerk the stipulations?

The Clerk: Yes.

Mr. McMahon: I have already handed them to the clerk.

The Court: Will you give me time to read this stipulation? It was just handed to me.

Mr. Rhone: I might state that we have a little additional evidence that we could not agree on.

Mr. Doherty: May the record show, your Honor, preliminarily, that although the stipulation is submitted, that is, the stipulation of facts, it is done so on the part of the defendant with the reservation

and the objection that the plaintiff has no authority to institute this action, that the complaint does not state a cause of action entitling them to any relief, that the acts complained of are those [3*] solely within the jurisdiction of the Home Loan Bank Board, and not within the provisions of the plaintiff; that any act of the State of California which is in contravention of the federal act is null and void in so far as it applies to the operation of the Coast Federal Savings and Loan Association, is incompetent, immaterial and irrelevant, and that it is an attempt on the part of a State agency to interfere with the operation of a federal agency over which the State agency has no jurisdiction.

Mr. Court: Mr. Clerk, may I see the original file?

Your stipulation talks about the signs which appear as Exhibit A, copies of which are attached to the complaint.

As I recall, they weren't attached to the complaint, and subsequently they were filed with the understanding that they would be considered as part of the complaint. I am just wondering where they are in the file. Do you remember how we got them into the file? I find the stipulation and order filed March 17, 1950, which has the pictures. I suppose your stipulation is all right. You say "attached as Exhibit A to the complaint," and the stipulation, I believe, makes them part of the complaint.

Mr. Rhone: It was my understanding that they

* Page numbering appearing at top of page of original Reporter's Transcript.

were actually attached to the original complaint, but when the matter was transferred to this court there had to be another copy of the complaint filed, and it was not attached to that copy. [4]

The Court: All right.

Mr. Rhone: Mr. Sparling, take the stand, please.

MAURICE C. SPARLING

called as a witness by and on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Maurice C. Sparling.

The Clerk: S-p-a-r-l-i-n-g.

The Witness: That's correct.

Direct Examination

By Mr. Rhone:

Q. What is your business or occupation?

A. Presently I am State Superintendent of Banks of the State of California.

Q. How long have you held that position?

A. Since December, 1945.

Q. Mr. Sparling, I wish to call your attention during the latter part of December, 1948, did you hear a radio broadcast of the defendant Coast Federal Savings and Loan Association?

A. I did.

Q. And can you identify the time about when that was?

A. I heard many of them, but the one you par-

(Testimony of Maurice C. Sparling.)

ticularly have reference to was, in my opinion, shortly prior to — [5] sometime prior to December 28th.

Q. And do you know what station it was?

A. No, sir, I do not. Some local station.

Q. Do you mean a Los Angeles station?

A. Los Angeles or Beverly Hills, I don't know.

Q. That was December of what year?

A. 1948.

Q. Can you tell us briefly the substance of that advertisement as you heard it on the radio?

Mr. Doherty: If the court please, at this time I wish to enter the same objection I heretofore made to this testimony. I will not ask your Honor to make a ruling at this time. If your Honor desires, you may withhold your ruling, and then at the proper time, at the conclusion of the testimony. I wish to make a motion to strike the testimony on the grounds I have heretofore stated.

The Court: The objection you made today when the proceedings started, that is the one you are incorporating by reference?

Mr. Doherty: Yes, the objection I made with respect to the agreed statement of facts, that they were submitted here subject to the objection I made, and any testimony of this witness—I wish to have a continuing objection to anything that he testified to, a ruling as your Honor determines either now or at the conclusion of his testimony, and then [6] with the opportunity on our part to make a motion to

(Testimony of Maurice C. Sparling.)

strike the testimony on the grounds set forth in our objection.

The Court: I understand. I will overrule your objection and reserve to you the right to move to strike it at the conclusion of the case.

The Witness: The radio advertisement was to the effect of urging the public to deposit their money with Coast Federal Savings, and in that broadcast reference was made to the banking office of Coast Federal Savings at 8th and Hill Streets, Los Angeles.

Q. (By Mr. Rhone): After you heard that did you have any communication with reference thereto with the defendant? A. Yes, sir, I did.

Mr. Doherty: I understand, your Honor, we have a running objection to all this testimony?

The Court: You do, you have a running objection to the entire line of testimony.

Q. (By Mr. Rhone): Mr. Sparling, I show you the original of a letter on the letterhead of the State Banking Department, San Francisco, December 28, 1948, to Mr. Joe Crail, President, Coast Federal Savings and Loan Association, and ask you is this the letter that you have reference to that you sent?

A. Yes, sir, it is.

Q. Without going into this entire letter, would you read that portion of the letter into evidence which relates [7] particularly to the radio broadcast that you have previously testified to?

A. The second paragraph of the letter reads as follows, or a portion of it:

(Testimony of Maurice C. Sparling.)

“Comment has been made that in your radio broadcasting you refer to your ‘banking’ office

* * * .”

That is not the complete sentence, but that is the part to which I have reference.

Q. My attention has been called to the fact that you mentioned the address of the defendant as at 8th and Hill, or 9th and Hill—or what was the address?

A. 8th and Broadway, I should have said. I believe I said 8th and Hill. I should have said 8th and Broadway, Los Angeles.

Q. Did you receive a reply to this letter?

A. Yes, sir, I did.

Q. Mr. Sparling, I show you a letter on the letterhead of Coast Federal Savings and Loan Association, Los Angeles, dated January 24, 1949, to Mr. Maurice C. Sparling, Superintendent of Banks, and signed “Cordially yours, Joe, Joe Crail, President.” Is that the reply that you received?

A. Yes, sir, it is.

Q. Does that letter and did your letter to Mr. Crail cover other matters than the matter of the radio broadcasting? [8]

A. Yes, sir, they did.

Q. Will you read to us the portion of that letter which relates particularly to the radio advertising?

A. The fourth paragraph of the letter from Mr. Crail reads as follows:

“In regard to the facts, you are informed that we

(Testimony of Maurice C. Sparling.)

refer to 'banking offices' in our radio broadcasting. We have no record of having used the term in our advertising. I have never heard it used, although we did have a complaint from the Better Business Bureau that in our house organ of October 1st a story mentioned that we were moving into the banking quarters vacated by the Federal Reserve Bank at 9th and Hill. I am enclosing a copy of our house organ. The advertising man says he has no record of using the terms 'banking office' or 'banking quarters' in radio advertising. However, it would be possible that such term was included in padding one of our announcements to fill up the longer time of a commercial on a small station. Since there is no law against it and no misrepresentation it could have gotten by without anyone's thought."

Mr. Rhone: You may cross-examine. [9]

Cross-Examination

By Mr. Doherty:

Q. Captain Sparling, you read here a portion of the second paragraph of the letter of December 28, 1948. I believe you read just the sentence where it said, referred to "banking office." May I read the entire paragraph? A. Surely.

Q. Reading the second paragraph of the letter of December 28, 1948:

"Comment has been made that in your radio broadcasting you refer to your 'banking office' and we are informed that the large windows of your

(Testimony of Maurice C. Sparling.)

ground floor offices carry the inscription, 'Member Federal Home Loan Bank,' with the words 'Member Federal Home Loan' being in comparatively small letters while the word 'Bank' appears in disproportionately large letters—apparently intending to emphasize the word 'Bank' in connection with your association."

I have read it correctly, haven't I?

A. Yes, sir.

Q. Captain, you stated you had heard these advertisements several times on the radio?

A. No, sir. I think you misunderstood. I said I had heard advertisements of Coast Federal Savings and Loan Association [10] many times referring to themselves as Coast Federal Savings, but this radio broadcast, to my recollection I only heard it once or possibly twice.

Q. In connection with the bank?

A. In connection with using "banking office," yes.

Q. Were you specializing in listening to advertisements on the radio about that time?

A. Not any more than necessary, no, sir.

Q. And you deemed it necessary to check the Coast Federal Savings advertisements on the air about that time?

A. No, sir, I did not. It was only in connection with some other program that either concluded or began, and in the in-between period there would come an advertisement, as there is today, of the

(Testimony of Maurice C. Sparling.)

Coast Federal Savings and Loan Association. I wasn't listening for any such advertisement.

Q. Were you familiar at that time that the Coast Federal Savings was a member of the Federal Home Loan Bank?

A. I assume so. I had made no research into it, but I assume that unquestionably they were.

Q. And your complaint is you thought that using the word "bank" even in connection with the words "Member Federal Home Loan Bank" was violating the State law?

A. By no means, no, sir, not at all.

Q. Your complaint was that you thought that the word "bank" was emphasized or over-emphasized? [11]

A. In connection with what I refer to there, yes, very definitely.

Q. But anybody who read the advertisement or the sign or notice on the building would read the entire sentence, would they not?

A. No, sir, in my opinion they would not, they wouldn't be able to see the rest of it, all they would be able to see would be the word "Bank."

Q. From what distance did you read it?

A. I never did read it.

Q. Then you don't know what was on the building?

A. Only from photographs that I had made and reports made to me by many, many others.

Q. And those are the photographs that are set forth in the complaint?

(Testimony of Maurice C. Sparling.)

A. No, sir. Those set forth in the complaint were taken afterwards. I had had some others before.

Q. After this had been called to your attention did not you take the matter up with the representative here of the Federal Home Loan Bank?

A. I believe not. If I recall correctly, I did not do so. The matter was invited to my attention, I believe, by the Better Business Bureau of Los Angeles. I may be mistaken in that. But I know it came from some outside source that it was first invited to my attention, this sign on the building [12] emphasizing the word "Bank." In that connection, from across the street it was portrayed to me that the word "Bank" stood out and you couldn't read the other part of it. I didn't personally see it, and I never saw it from across the street either, but it was about that time and just prior to that that I heard the radio broadcasting referring to "banking office at 8th and Broadway," also.

Q. Didn't you learn later that the Federal Home Loan Bank representative had requested Coast Federal Savings to make the letters more in harmony with each other, in other words, the words "Federal Home Loan" and "Bank" to be about uniform in size?

A. That may have been so. The Better Business Bureau kept in touch with me about it, and I think they told me that they had also reported to the representatives of the Federal Home Loan Bank, and at first hadn't received any support on the matter.

(Testimony of Maurice C. Sparling.)

but later I think Mr. Crail told me personally that he was making that change.

Q. That was about how long before you filed your action?

A. Well, I don't know. I had taken the matter up, I believe, of filing the action with the attorney general's office prior to the time the change was made or prior to the time I knew it was going to be changed. I don't recall definitely when the action was filed. [13]

Q. The action was filed, I believe, in November, 1949.

A. Well, then it would be from December 28, 1948—that may have been the second letter to Mr. Crail, I don't know, I wrote him more than one letter, I believe, but if that is the first letter, then it would be from the period December 28, 1948, to November, 1949, when the action was filed, approximately nine months, or eleven months later that the action was filed.

Q. And you heard no complaints—rather, you know of no other instances between December, 1948, and November, 1949, where the word “bank” was emphasized in its name on the building, or used in radio or other advertising?

A. No, sir, not after the change was made, and I think it was made—I don't know the date, but I imagine probably along in January or February of '49, and after that I did not hear any such complaint, no, sir.

Q. How many members of the public who had

(Testimony of Maurice C. Sparling.)

done business with Coast Federal Savings had come to you and reported that they had been deceived by going in there thinking it was a bank and leaving their money there with the impression that it was a bank, only to find out it was a savings and loan association?

Mr. Rhone: I object to that as immaterial.

The Court: Overruled. I don't know how much probative weight it has. [14]

The Witness: I don't know. I received complaints, I received a written one just on last Friday, they didn't mention the Association, but the party had said that he had put money into it thinking it was a bank, and then later found out it was a building and loan association, and how could he get his money out and what-not. Whether any of them related to the Coast Federal Savings & Loan Association, I don't know.

Q. (By Mr. Doherty): You don't know of any complaint of your own knowledge that was ever made to you respecting Coast Federal Savings where the depositor or customer or certificate holder had been misled in putting his money in there on the assumption and belief that he was depositing it in a bank, in the so-called common accepted use of the word.

A. I don't know definitely. The first complaint that came to me was a cumulative one from the Better Business Bureau, and I don't know of any individual coming to me. They wouldn't ordinarily do so.

(Testimony of Maurice C. Sparling.)

Mr. Doherty: I think that is all, Captain.

Mr. Rhone: That is all.

The Court: Thank you. You may step down.

Mr. Rhone: Plaintiff rests.

Mr. Doherty: If your Honor please, in order to complete the record we would like to introduce in evidence—we [15] couldn't cover it by the stipulation of facts or agreed statement of facts—these various documents, namely, the certificate that is issued by the Coast Federal Savings to one who is a customer, the pass-book that is issued to them, the document they signed, the contract they signed when they became a member. It will only take just a few moments.

The Court: Probably there is a stipulation that these are those documents? How about it, Mr. Rhone?

Mr. Rhone: I suppose, but I haven't seen them. I have asked for them, though.

Mr. Doherty: I am violating the rules, your Honor; I am calling an attorney as a witness, and they make the most terrible witnesses under the sun. I am calling Mr. McMahon.

The Court: Mr. Sparling didn't hear what you said. We will exempt him from that broad statement.

You may take the stand, Mr. McMahon.

HARRY C. McMAHON

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Harry G. McMahon. [16]

Direct Examination

By Mr. Doherty:

Q. Mr. McMahon, you are also attorney of record in this case? A. I am.

Q. What connection have you with the Coast Federal Savings and Loan Association, the defendant here?

A. I am sometimes attorney for Coast Federal Savings and Loan Association.

Q. And are you familiar with their practices and their business conducted over at their office in Los Angeles? A. I am, sir.

Q. And were you during the years 1948 and '49 and '50 and up to this time in 1951?

A. I am familiar with their practices from January 3, 1949, down to the present. I have examined the practices before that date, but I was not acting as attorney for them.

Q. I am going to hand you some documents here and I want you to pick out all those that have to do with opening an account at the Coast Federal Savings.

The Court: Start at the beginning and give us the chronological order.

(Testimony of Harry G. McMahon.)

Q. (By Mr. Doherty): Yes, take the order in which the business is transacted. [17]

A. I shall start with the person coming in Coast Federal. He is usually met at the door by a person there for that purpose who asks what his business is, what he is interested in. If he says he is interested in opening an account, he is directed to the New Account section. He is then introduced to a young lady or young gentleman whose business it is to open new accounts——

Mr. Rhone: May I interpose an objection at this time? I wish to strike the answer for the purpose of making an objection, and my objection is that this material is all entirely immaterial and outside the issues in this case. The issues in this case simply are whether or not the defendant is holding itself out as a bank or representing to the public it is a bank, and it is not a question of mechanics of the internal operation of the business.

The Court: You have alleged in your complaint that they are conducting business as a bank, therefore one of the issues under the pleadings is how are they conducting business. I think it is probably material. The objection is overruled.

A. (Continuing): The first question the new account taker asks of the customer is to determine whether they are interested in an investment certificate type of investment which is only issued in \$100 amounts. No pass-book is given, but a share similar to a stock certificate is given. [18]

(Testimony of Harry G. McMahon.)

The Court: Let's mark that as Defendant's Exhibit A.

You may have a running objection to this line of testimony and the exhibits, Mr. Rhone.

Mr. Rhone: Thank you.

The Court: The certificate will be marked as Defendant's Exhibit A, received in evidence.

(The document referred to was marked Defendant's Exhibit A, and was received in evidence.)

The Witness: With the certificate dividends are mailed at the close of the dividend period to the investor. The investor may be interested in a pass-book account, savings account, or as it is also called, a savings share account, in which case this pass-book is issued to the investor.

The Court: Mark the pass-book Defendant's Exhibit B, and receive it in evidence subject to the understanding with reference to the objection.

(The document referred to was marked Defendants' Exhibit B, and was received in evidence.)

The Witness: Once the type of investment is determined, the employee of Coast Federal determines which type of account would best suit the wishes of the investor. There are trust accounts that are the same as, really, a Totten trust.

Q. (By Mr. Doherty): Follow the procedure right through, Mr. McMahon.

(Testimony of Harry G. McMahon.)

A. May I ask a question? [19]

Q. The question is the procedure that is followed by your company, the matter of transacting business, when a prospective customer comes into your institution. You have already said he comes in and if he wants \$100 or more you have Exhibit A, then you have another account that is known as Exhibit B; now what else is done by your institution there, the defendant, with the customer, what other documents does he sign, if any, in connection with his account?

A. The customer may sign any one of several types of signature cards. There are several types of signature cards, because there are several types of accounts. One is the account I have mentioned, a Totten trust, there is an individual account, there are joint accounts, and there are corporate savings accounts.

The Court: Do you have the signature cards there?

The Witness: I do.

The Court: Can't we mark all the signature cards as Exhibit C? Don't they speak for themselves as to what they are, or would you like them marked separately?

The Witness: I am missing one, but it isn't important. I believe the individual signature card is typical. It reads: I hereby apply for membership and a (Certificate) (Savings) account in the Coast Federal Savings & Loan Association of Los Angeles and for the issuance of evidence of membership. * * * [20]

(Testimony of Harry G. McMahon.)

The Court: The signature cards handed to me by the witness will be marked Exhibit C and received in evidence

You seem to have one duplication in here.

Mr. Doherty: The one handed your Honor is the one that the witness just read from.

The Court: Yes. Mark them as Exhibit C, received in evidence subject to the previous objection.

The Clerk: Five of them.

(The documents referred to were marked Defendant's Exhibit C, and were received in evidence.)

Q. (By Mr. Doherty): What you are saying, Mr. McMahon, is if a corporation comes in they sign one type of card, if it is a joint account another, an individual account another, and so forth?

A. That is correct, sir.

Q. But the contents of each of the cards is as set forth in the Exhibit C that has now been introduced?

A. That is correct, sir.

Q. What else is signed by the customer?

A. At that time nothing else is signed.

Q. When is the document signed that is now before you here?

A. The signature cards, as are the seven or eight documents immediately before me, are signed before an account is opened. [21]

The Court: Now, we have got some signature cards in evidence as Exhibit C. That is just the same sort of thing, isn't it?

(Testimony of Harry G. McMahon.)

The Witness: Yes.

Mr. Doherty: May I look at C? I didn't see all of this.

Yes, your Honor, it is part of C.

Q. (By Mr. Doherty): What type of accounts are given pass-books?

A. Any one of the several types of accounts offered are given either to the holders of a pass-book account or an investment certificate account.

The Court: That isn't quite clear. Do you mean whether the person has an investment certificate account or whether they have a pass-book account there has to be one of these signature cards signed up?

The Witness: Yes.

The Court: But Mr. Doherty asked you what kind of an account was it where you gave a pass-book to a customer.

The Witness: We will give a pass-book to any one of the several types of account.

The Court: You wouldn't give a pass-book to a person who held an investment certificate, would you?

The Witness: No. In my mind I have grouped accounts as to trust, joint, single name, and so on. I think that is [22] where my confusion results.

Q. (By Mr. Doherty): Mr. McMahon, I will show you a document issued by the Federal Savings and Loan Insurance Corporation.

I think your Honor will take judicial notice that

(Testimony of **Harry G. McMahon.**)

that insurance corporation is part of the Federal Home Loan Bank Act.

The Court: The court is familiar with that, the statute and the corporation that exists.

Mr. Rhone: Which part of this do you have reference to, Mr. Doherty?

Mr. Doherty: Counsel has asked me what part I have reference to. Your Honor, to save time I am directing his attention to part of page 5 and page 8, just some particular items on those. I can introduce the whole matter, but it will encumber the record.

Q. (By Mr. Doherty): I will first show you, Mr. McMahon, this document and ask you from what source you got this.

The Court: This will be barked Exhibit D for identification, the document you are talking about.

(The document referred to was marked Defendant's Exhibit D, for identification.)

Q. (By Mr. Doherty): I am referring to D, for identification; to your knowledge who issues this document?

A. It states on the face of it that it is issued by [23] the Federal Savings & Loan Insurance Corporation.

Q. Washington, D. C.?

A. Washington, D. C.

Q. And it is instructions respecting advertising, is it not?

A. That is correct, sir.

Q. I will direct your attention to page 5 designated as Exhibit 1, and to the following:

(Testimony of Harry G. McMahon.)

“Insured Savings Accounts,” “Are your savings insured against loss?” “Save where savings are insured,”——

Mr. Rhone: Mr. Doherty, did you want to read that whole page into the record?

Mr. Doherty: No. I am just reading two or three. You can read it all, if you want to. I will do what your Honor suggests. I am reading just a couple of highlights out of it for the record.

The Court: I don't care, whatever you want to do. Do you want the whole page, Mr. Rhone?

Mr. Rhone: No, I just thought it would be more accurate to get a whole page, or something like that.

Mr. Doherty: Then, your Honor, I will offer the next exhibit in order, Exhibit D, without being just for identification.

The Court: All right. Received as Defendant's Exhibit D. [24]

Do you want the whole document received, or just pages 5 and 8?

Mr. Doherty: Let the whole document in. It is directions from that organization to the members on how to handle their business.

Mr. Rhone: What is the title of the document?

The Court: It is entitled “Suggestions for Federal Savings and Loan Associations in giving information to the public.”

At the bottom it says, “Issued by Federal Savings & Loan Insurance Corporation, Washington, D. C.”

(Testimony of Harry G. McMahon.)

(The document, heretofore marked Defendant's Exhibit D, for identification, was received in evidence.)

Q. (By Mr. Doherty): I will now show you, Mr. McMahon, another document—I will first show it to counsel—entitled “Charter and Bylaws of Coast Federal Savings and Loan Association,” and ask you if that is a document that is issued by the defendant?

A. That is issued by the defendant.

Q. What is done with that with respect to a customer when the customer comes in and signs up those contracts that are now in evidence?

A. That is made available to every customer when an account is opened.

The Court: We will mark that Exhibit E and receive it [25] in evidence. And I take it, Mr. McMahon, that that Exhibit E is a copy of the charter and bylaws of the Coast Federal?

The Witness: That is correct.

(The document referred to was marked Defendant's Exhibit E, and was received in evidence.)

Q. (By Mr. Doherty): Does each and every customer get a copy of this charter?

A. I cannot swear that each and every customer does. I would rather say that most of them do. It is offered to all, but one may not take it.

Q. In other words, it is offered to them?

A. Yes.

(Testimony of Harry G. McMahon.)

Q. Are there any other documents there that a customer uses or is given to a customer, or a customer signs, in connection with doing business with your association?

A. There are two other documents offered to a customer at the time a new account is opened. One is the financial statement as of the last dividend period of Coast Federal Savings and Loan Association, the defendant. This is a typical financial statement. It is headed "Coast Federal Savings and Loan Association."

The Court: Mark that Exhibit F and receive it in evidence, subject to the running objection of the plaintiff.

(The document referred to was marked Defendant's Exhibit F, and was received in evidence.) [26]

The Witness: The other document is entitled on its face "Security for your savings Coast Federal Savings."

The Court: What is it?

The Witness: It is promotional material that gives the history and a short explanation of Coast Federal Savings and Loan Association.

The Court: Receive it as Exhibit G in evidence subject to the same objection.

(The document referred to was marked Defendant's Exhibit G, and was received in evidence.)

(Testimony of Harry G. McMahon.)

Q. (By Mr. Doherty): What other documents or contracts does a customer sign when they first do business with you, open up an account?

A. In addition to what I have already mentioned the customer will sign one of two types of ledger cards. If the customer opened an investment certificate type of account his specimen signature will be put on the investment share account ledger card, which is kept in the records of the Association.

The Court: Do you have a copy of one there?

The Witness: Yes, I have.

The Court: Mark it H, and receive it in evidence, Defendant's H, and subject to the same objection.

(The document referred to was marked Defendant's Exhibit H, and was received in evidence.) [27]

The Witness: If the customer invests his money in a savings share account he will sign the savings account ledger card, and that will be kept in the records of the Association.

The Court: Do you have one there?

The Witness: I have one.

The Court: Mark it I, and receive it in evidence, Defendant's Exhibit next in order. The plaintiff may have the same objection.

(The document referred to was marked Defendant's Exhibit I, and was received in evidence.)

(Testimony of Harry G. McMahon.)

The Witness: There are one or two other documents signed during the course of business, but I don't feel it necessary to go into them.

Q. (By Mr. Doherty): You have one there where someone loses a pass-book, you sign an affidavit; is that correct? A. Yes.

Mr. Doherty: I don't think that would be pertinent here, your Honor. That is merely the exception when they lose the pass-book. Except if counsel wants it.

Mr. Rhone: I don't want it.

Q. (By Mr. Doherty): Mr. McMahon, does any customer or anyone doing business with the Coast Federal Savings, leaving money there, depositing there, or whatever relationship you may indicate, sign any contract or have any [28] arrangement where the relation of debtor and creditor exists between Coast Federal Savings and the customer?

A. Not with——

Mr. Rhone: Just a minute. I object to that as calling for a conclusion of the witness. I think we have the documents in evidence. He may be asked if they sign any other documents.

The Court: Read that question, Mr. Reporter.

(The question was read by the reporter.)

The Court: Of course, that comes almost being one of the ultimate question, if plaintiff has any right of recovery, if it is a debtor-creditor relationship—skipping over the question of the authority of the State to interfere with the federal instru-

(Testimony of Harry G. McMahon.)

mentality—if there is a debtor-creditor relationship, then there is a bank.

I am going to sustain the objection.

Mr. Doherty: I agree with your Honor.

Q. (By Mr. Doherty): Mr. McMahon, are there any other documents or contracts signed between Coast Federal Savings and anyone doing business with it, that is, investing money there, leaving money there, or savings, other than those that have been introduced in evidence?

A. No, sir.

Mr. Doherty: Cross-examine. [29]

Cross-Examination

By Mr. Rhone:

Q. Mr. McMahon, do you know the percentage of people that invest money in Coast Federal Savings and Loan Association who do so by securing an investment certificate rather than a pass-book?

A. Not of my direct knowledge, no. I can give you my impression. I can't answer it of my direct knowledge.

Q. What is your information on it?

Mr. Doherty: May I have the preceding question?

(The record was read by the reporter.)

The Witness: I will give you the source of my information. In the 8th Street office there are 15 tubs of savings share account ledger cards, there

(Testimony of Harry G. McMahon.)

is slightly over one tub and less than two tubs of investment certificate ledger cards. That is as close as I can give it to you.

Q. (By Mr. Rhone): So the other 13 and a fraction tubs are of pass-book accounts?

A. Yes.

Q. And would the same percentage hold with reference to your 9th and Hill Street office?

A. I can't answer that based on any information. I have no information there.

Mr. Rhone: That is all.

The Court: Step down. Thank you. [30]

Mr. Doherty: Your Honor, might I confer with Mr. Crail just a moment in order to shorten the matter?

The Court: Yes.

(Slight delay in proceedings.)

Mr. Doherty: I assume, your Honor, that the court will take judicial notice of the Code of Federal Regulations issued by the Federal Government?

The Court: Certainly.

Mr. Doherty: It is now, under an act of Congress, that after they are published and recorded they become subject to judicial notice, that is my recollection.

The Court: I think so. The matters that appear in the Federal Register, a lot of them end up in the Code of Federal Regulations. There is no ques-

tion about taking judicial notice of it. That isn't, I don't think, subject to proof.

At least I have cited it a lot of times in briefs and never had any evidence in the record to sustain it.

Mr. Doherty: It is my recollection, I may be wrong, that the Act of Congress requires regulations to be put in the Federal Register, and then they ultimately get into the Code, and the Court can take judicial notice of it.

The Court: That is the way I understand it.

Mr. Doherty: Defendant rests, your Honor.

The Court: Any rebuttal, Mr. Rhone? [31]

Mr. Rhone: No rebuttal.

The Court: Both sides rest?

Mr. Rhone: We rest.

The Court: I take it before you rest you want to make a motion to strike the testimony of Captain Sparling?

Mr. Doherty: Yes, before we rest. I now at this time make a motion to strike all the evidence that Captain Sparling has given with respect to what he heard on the radio, what was contained in his letter to Mr. Crail, what was contained in Mr. Crail's letter to him, with respect to the word or use of the words "bank" or "banking office," or that the word "bank" was over-emphasized in size with respect to the rest of the words "Federal Home Loan," on the grounds that it is incompetent, irrelevant, immaterial, without the issues of this case, and that the plaintiff as a state agency has no jurisdiction or control or authority over a

federal savings and loan association, nor can in any way control it, regulate it, or direct its operation, that it is a field in which the Federal Government has preempted all activities, that the matter is subject entirely and solely to the regulations, control and direction of the Federal Home Loan Bank Board, and that the State of California, Superintendent of Banks, has no jurisdiction to control or regulate or direct the business of the defendant in the matters complained of or in any other [32] respect.

The Court: I take it, however, you are not making any objections on the ground of any lack of foundation or upon any ground of hearsay? In other words, you are basing your objection upon the general principle involved in the fact that this Coast Federal Savings and Loan Association, the defendant, is a federal instrumentality?

Mr. Doherty: Yes, your Honor, a federal agency under the control of the Acts of Congress and the regulations of the agency established by Congress, and beyond the power of the State in any way to control, regulate or interfere with it.

The Court: I will reserve ruling on that motion until after I hear such argument as we are going to have.

What are your views on arguing this case?

Let me say this. I wouldn't be honest with you if I didn't tell you what my present thought is in the matter and therefore maybe we can save some time in argument.

My present thought is that my decision in this

case should be for the defendant. I am tentatively in accord with Mr. Doherty's position that this Building and Loan Association is a federal instrumentality, it is not subject to control or supervision by the State of California.

As much as I would like to hear Mr. Doherty repeat those arguments, and learned amicus curiae, Mr. Rosensweig, I think I should tell you what I am thinking about, and any [33] argument that I hear I would like to hear from the plaintiff's side to see whether you can shake me from that position.

Of course, you probably guessed it from the pre-trial. I pretty well expressed myself as to what I thought about the case.

How much time would you want, Mr. Rhone, to present your argument?

Mr. Rhone: Well, I can present my argument now at this time and it will not take over an hour, or we can brief the matter. Frankly, I have not had an opportunity to go through the briefs submitted by general counsel for the Home Loan Bank, and I am not prepared——

The Court: Are you referring to the brief filed by Mr. Rosensweig?

Mr. Rhone: Yes.

The Court: Let's do this, then. We will take a short recess, you confer with counsel and see what your views are on the matter. If you haven't been through that brief, it probably would be more desirable to give you a chance to file a written brief in the case, and give you the advantage of

looking over those authorities before you are either required to argue this matter or proceed further with it. It will be satisfactory to me to let you either argue it in part or very briefly, or waive your argument and file a brief in the matter. You might discuss it with counsel. In the [34] meanwhile we will take a short recess.

(A recess was taken.)

Mr. Rhone: May it please the court, the plaintiff would like to have an opportunity to brief this matter quite thoroughly, particularly in view of the brief filed recently by amicus curiae, and both Mr. Bowers and I have rather a tight schedule, but we believe we can get a brief in within 30 days, therefore we request that we have 30 days within which to file a written brief. We also believe that thereafter if either party thinks that oral argument is required, that the matter should then be set perhaps 10 days later for such oral argument as the court may desire to hear.

Mr. Doherty: Whatever your Honor pleases. I judge it is perfectly right and proper that counsel should have additional time to examine the authorities and give as much aid to the court as possible. If your Honor desires us to file a reply brief, closing brief, or to argue it orally in open court, we are agreeable.

Mr. Sheppard: May it please the court——

The Court: Mr. Sheppard.

Mr. Doherty: Mr. James Sheppard, who is attorney for the California Savings and Loan League.

Mr. Sheppard: That is correct. With the permission of the court and counsel I sat in on the pretrial hearing and have sat in on the trial today. On behalf of the California Savings [35] and Loan League, or on behalf of ourselves as *amicus curiae*, should the matter be submitted on briefs and the court desire authorities, we should like very much to submit a memorandum in support of the defendant's position, on behalf of the California Savings and Loan League. We request permission of the court so to do.

Mr. Rosensweig: The government takes the same position, your Honor; we would like an additional period of time after the State's brief is filed to file additional authorities if we deem it necessary.

The Court: All right. Plaintiff may have to and including March 12th to file a memorandum of points and authorities in support of their position. The defendant may have to and including March 19th to file additional authorities if you deem it advisable. You have filed extensive memorandums already, and I doubt if there is very much law that has not been dug up in this case, but if you find that you have additional authorities that you want to submit you may have to and including the 19th. The government may have to and including the 19th.

Mr. Sheppard's motion to appear as *amicus curiae*, is granted, and if he desires to file a memorandum on behalf of his client he may have to and including March 19th.

Mr. Rosensweig, did you serve copies of your brief on opposing counsel in this case? [36]

Mr. Rosensweig: Yes, I did. I did not serve a copy upon Mr. Sheppard.

The Court: I suggest you give Mr. Sheppard a copy, and then he can have that to look over before he decides whether to file a brief.

Mr. Rosensweig: I will see that he gets one.

The Court: Now, as to your motion——

Mr. Rhone: I think the plaintiff normally has a right to open and close. Since additional briefs may be filed—I had suggested that perhaps the matter be set for oral argument in the hopes that the oral argument would take care of the closing brief, but if there are going to be written briefs, then I think the plaintiff should have an opportunity to close. I was in hopes that would not be necessary.

The Court: Will one week additional be sufficient for you after the 19th?

Mr. Rhone: I think it will.

The Court: To and including March 26th for the plaintiff to reply, if he is so advised.

Mr. Doherty: My understanding is that there will be no oral argument; it will all be on briefs?

The Court: No oral argument unless the court requests it.

As to your motion to strike, Mr. Doherty, I would prefer to rule on that now. We have sort of heard this case on the [37] merits. I see no harm in denying your motion at the present time. I think we meet the same issues with that evidence

in the record that we meet without it in the record, and if your position is correct it is true the court could grant that motion, but I don't see any harm being done in denying it, and I don't like to leave motions like that hanging, because when the matter is under submission I have to dig around and find out just exactly what is submitted. I think the thing is in as good a posture for submission with that in the record as it is with it out of the record.

Mr. Doherty: I made the motion, and I believe it is a good motion——

The Court: I frankly think it is a good motion, and my inclination would be to grant it, but I don't want to grant it without giving counsel a chance to be heard, and if I postpone ruling on it then I have that motion hanging fire. I am going to deny your motion to strike, and leave it in the record. You have a short record and I think you have a record that raises these questions very clearly.

Mr. Doherty: In our closing memorandum, when and if we file it, we will renew our motion to strike, is that the situation then?

The Court: You may if you want to. All right. Anything further?

Mr. Rhone: Nothing further. [38]

The Court: I don't want to appear to be arbitrary, Mr. Rhone, and Mr. Sparling, and Mr. Bowers, about what I said about my view of this case, but I proceed upon the theory that in fairness to counsel a judge ought to tell lawyers what he is

thinking about. And why should I sit and listen to some argument from Mr. Doherty and Mr. Rosen-sweig on a position that I think is correct, rather than tell you very frankly that I am inclined to rule against you and put the burden upon you to convince me otherwise.

I don't mean by that that I wouldn't change my mind. You might present some matters to me that would cause me to change this tentative position. But, as I indicated at the pre-trial and indicated here, it seems to me that you have here a government instrumentality created by federal statute. If that type of instrumentality could be regulated and supervised, complained of, by the State, you would have all sorts of confusion.

There is a way in which irregularities can be controlled. The Federal Government has power, has considerable power. Some of that power is being tested out in the case of *Mallonee v. Fahey*, the right of seizure if necessary. I have in mind, also, other cases. It seems to me there is a string of cases that I ran onto involving post exchanges which were held to be instrumentalities of the Federal Government and were not subject to certain State action. I [39] think there may be some exception in the field of taxes. I don't think you could make a broad statement if you tried to include in it the matter of taxes, but it seems to me, if I recall correctly—I might be wrong—that a post exchange was held to be a federal instrumentality.

Your suit alleges and you have offered proof in

your stipulation attempting to show that the public was misled.

I don't think the public is misled in going to a savings and loan when they put money in there. I think they know they are not going to a bank. I will wager that very, very few people, if any, have ever gone into a building and loan and asked for a loan, which is a typical thing they do at a bank. I think they have gone to building and loans and said, "Here is some money I want to put on deposit," or "I want a certificate or a pass-book," and I think the federal statute contemplated this was a method of saving.

In the Finnegan case, 97 Fed. 2d, they had before the court the question of the welfare clause and discussed the fact that the government might set up these institutions.

It seems to be a pretty strong case in favor of defendant's position.

To a certain extent they may compete with banks, but I don't think any of the banks in the State of California have suffered great economic detriment from the competition of building and loans. The field is amply broad for both of [40] these types of institutions.

Those, generally, are my views on this matter. I think you have a government instrumentality, the federal statute created it, and I don't think a State can step in and attempt to supervise it or complain of the way it operates.

Even if we had a case in which this building and loan was advertising, "We are a savings bank,"

omitting all reference to its character as a federal instrumentality, I don't think your remedy would be in this kind of proceeding. I think representations could well be made by the Commissioner of Banks to the Home Loan Bank Board in Washington, D. C., and I wouldn't be surprised if there wouldn't be some very strong action—it would be a matter of comity to the State of California—to cure that kind of ill. But I don't think the State has authority to reach a problem of that sort in this kind of a proceeding.

My present inclination would be to find that the public are not deceived; to find that although the defendant has done the things which are shown in the stipulation, exhibited the sign, used the name "Coast Federal Savings," that it has conducted the type of business contemplated by the Federal statute, and my present inclination would be to render a judgment on the merits as well as on the law against the plaintiff and in behalf of the defendant.

Anything further? [41]

Mr. Rhone: Nothing further.

Mr. Doherty: No, your Honor.

The Court: Thank you for your co-operation in boiling this case down to its real essence. There is very little dispute of fact as to what went on here. If I am wrong, of course I can be reviewed very easily. [42]

Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the

United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 19th day of February, A.D. 1951.

/s/ SAMUEL GOLDSTEIN,
Official Reporter.

[Endorsed]: Filed September 4, 1951.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 141, inclusive, contain the original Petition for Removal of Action and exhibits thereto; Notice of Petition for Removal; Answer to Complaint; Pre-Trial Memorandum of Defendant; Memorandum of Plaintiffs' Views for Informal Pre-Trial; Stipulation and Order re Exhibits to Complaint; Supplemental Pre-Trial Memorandum of Defendant; Petition for and Order Permitting appearance as Amicus Curiae; Stipulation of Facts for the Purposes of Trial; Opinion; Proposed Findings

of Fact and Conclusions of Law; Judgment for Defendant; Notice of Appeal; Two Designations of Record on Appeal and Objection of Appellants to Appellee's Designation of Additional Record on Appeal, and a full, true and correct copy of Minute Order Entered June 21, 1951, which, together with original defendant's exhibits A to I, inclusive, and copy of reporter's transcript of proceedings on February 23, 1950, November 13, 1950, and February 12, 1951, transmitted herewith, constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 1st day of October, A.D. 1951.

[Seal]

EDMUND L. SMITH,
Clerk.

By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 13119. United States Court of Appeals for the Ninth Circuit. People of the State of California and Maurice C. Sparling, as Superintendent of Banks of the State of California, Appellants, vs. Coast Federal Savings and Loan Association, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California Central Division.

Filed October 2, 1951.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals for the
Ninth Judicial Circuit

No. 13119

PEOPLE OF THE STATE OF CALIFORNIA,
and MAURICE C. SPARLING, as Superin-
tendent of Banks of the State of California,

Appellants,

vs.

COAST FEDERAL SAVINGS AND LOAN AS-
SOCIATION, a Corporation,

Appellee.

STATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY, AND
DESIGNATION OF RECORD

The appellants, the People of the State of California and Maurice C. Sparling, as Superintendent of Banks of the State of California, intend to rely on appeal on the following points:

1. The District Court erred in holding invalid the Banking Statutes of the State of California, which provide in effect that only legally chartered State or Federal banks can hold themselves out as banks, as applied to a privately owned federally chartered savings and loan association operating for profit in the State of California.

2. The District Court erred in holding that a privately owned federally chartered savings and

loan association, operating for profit in California, could hold itself out as a bank without being chartered as either a Federal or State bank.

3. The District Court erred in holding that a privately owned, federally chartered savings and loan association, doing business for profit in California, need not comply with State laws, which laws are not in conflict with Federal laws or regulations.

4. The District Court erred in holding that the State of California is impotent to enforce its statutes either in the State or Federal courts as to a privately owned, federally chartered savings and loan association, doing business for profit in the State of California.

5. The District Court erred in holding that the State of California may not bring an action against a privately owned, federally chartered savings and loan association, operating for profit in the State of California, for violation of a State statute without first having applied to the Federal Home Loan Bank Board for such relief.

6. The District Court erred in holding that the doctrine of exhaustion of administrative remedies applied to the State of California with reference to the violation of the banking laws of the State of California by a privately owned, federally chartered savings and loan association, doing business for profit in California.

7. The District Court erred in holding that a privately owned, federally chartered savings and loan association doing business for profit in California, is an instrumentality of the Federal Government.

8. The District Court erred in holding that a privately owned, federally chartered savings and loan association, doing business for profit in California, is exempt from complying with the State laws; and by such exemption can hold itself out as a bank, contrary to its own organization and contrary to the laws of the State of California.

9. The District Court erred in holding that the State of California does not have the inherent right to enforce its own laws as to a privately owned, federally chartered savings and loan association, doing business for profit in California, such laws not being in conflict with Federal laws or regulations.

10. The District Court erred in holding that the Home Loan Bank Board has primary jurisdiction over a privately owned, federally chartered savings and loan association, doing business for profit in California, when such association, contrary to its own organization and contrary to the laws of California, holds itself out as a bank.

11. The District Court erred in holding that the State courts have no jurisdiction to enforce the pro-

visions of the Banking Code of California as to a privately owned, federally chartered savings and loan association, doing business for profit in California, which Banking Code provides that only State or Federal chartered banks may hold themselves out as banks.

12. The District Court erred in holding that upon removal of an action from a State court to a Federal court, the Federal court must dismiss the proceeding where it is clearly shown that a privately owned, federally chartered savings and loan association, doing business for profit in California, was holding itself out as a bank, contrary to the banking laws of the State of California.

Designation of Record

That the appellants hereby designate as the record, which is material to the consideration of this appeal or review, those items numbered 1 to 14, inclusive, in the Appellants' Designation of Record on Appeal, dated August 30, 1951; which items constitute the entire official proceedings. The consideration of this appeal will not involve the six items listed in the Appellee's Designation of Additional Record on Appeal, dated September 11, 1951, and to which items the appellants herein have heretofore filed objections, on the ground that the items requested therein are not properly part of the record and are

not part of the official proceedings which have taken place herein.

Dated October 5th, 1951.

EDMUND G. BROWN,
Attorney General;

WALTER L. BOWERS
Assistant Attorney General;

/s/ BAYARD RHONE,
Deputy Attorney General,
Attorneys for Appellants.

Affidavit of Services by Mail attached.

[Endorsed]: Filed October 8, 1951.